132-264
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132-264

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~255~~ 86

HENRY C. DAHL, PLAINTIFF IN ERROR,

vs.

THE MONTANA COPPER COMPANY.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

FILED SEPTEMBER 21, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 353.

HENRY C. DAHL, PLAINTIFF IN ERROR,

vs.

THE MONTANA COPPER COMPANY.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

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1 In the District Court, Second Judicial District of Montana in & for the County of Silver Bow.

THE MONTANA COPPER COMPANY, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

The people of the Territory of Montana send greeting to Henry C. Dahl, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the second judicial district of the Territory of Montana in and for the county of Silver Bow, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served out of this county but in this district, within twenty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of said complaint. The said action is brought to obtain a decree of this court adjudging plaintiff to be the right-
2 ful owner and entitled to the possession of the following-described premises (being in controversy between the placer claim of plaintiff and the Betsy Dahl lode claim of defendant), to wit: Beginning at the point of intersection of the south side line of the Betsy Dahl lode with the east side line of said placer claim, from which corner No. 1 of the Betsy Dahl lode bears N. 89° 45′ E., 357 feet distant, and running thence north 548 feet; thence south 89° 45′ W. 374 feet; thence south 24° 45′ W. 75 feet; thence S. 88° W. 255 feet; thence south 472 feet; thence N. 89° 45′ E. 660 feet to place of beginning, containing an area of 7 and $\frac{87}{100}$ acres of land, more or less; also to obtain a decree of said court adjudging that the defendant is not entitled to said premises or the possession thereof or any part, and for such other and further relief as said plaintiff may be entitled to, and for costs of suit; and you are hereby notified that if you fail to appear and answer said complaint as above required the said plaintiff will take a default against you and apply to the court for the relief prayed for and for costs of suit.

3 Given under my hand and the seal of the district court of the second district of the Territory of Montana in and for the county of Silver Bow this 17th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] GEO. W. IRVIN, II, *Clerk*,
By H. C. BODLEY,
Deputy Clerk.

OFFICE OF THE SHERIFF OF
SILVER BOW COUNTY, MONTANA TERRITORY.

I hereby certify that I have received the within summons on the 17th day of June, A. D. 1882, and personally served the same, on the 19th day of June, A. D. 1882, by delivering a true copy of the

within summons to H. C. Dahl, in Butte City, in the county of Silver Bow, M. T., he being the defendant named in said summons.

Dated this 19th day of June, A. D. 1882.

THOMAS M. LOWRY, *Sheriff*,

Filed June 19th, 1882.

GEO. W. IRVIN, II, *Clerk*.

4 *Amended Complaint.*

Second District Court of Montana Territory, Silver Bow County.

THE MONTANA COPPER COMPANY, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

Plaintiff, by leave of court first had and obtained, makes this his amended complaint herein, and alleges that plaintiff is, and at all times in the complaint mentioned was, a corporation created under and by virtue of the laws of the State of New York, and doing business as such corporation in this county and Territory; that plaintiff is the owner (except as to the United States), in possession, and entitled to the possession of the following-described premises, to wit, the owner of twenty acres of placer-mining ground described as follows: The west half of the southeast quarter of the southwest quarter of section eight (8), township three (3) north, range seven (7) west, of the principal base and meridian of Montana Territory; that said premises were duly claimed and located as a placer-mining claim by George F. Marsh, May 26, 1879; that by direct
5 and intermediate conveyances from said locator plaintiff is the sole grantee and owner of said premises; that plaintiff and his grantors and predecessors in interest in said premises have in all respects complied with all laws of the United States, of Montana Territory, and with all local rules and regulations of miners relating to said mining claim, and by virtue thereof are the owners of and entitled to the exclusive right of possession and enjoyment of said premises; that on or about the 19th day of November, 1880, plaintiff filed his application for patent for said placer claim and premises; that no vein or lode was known to exist within the boundaries of said placer claim at the time of making said application, nor is any now known to exist within the boundaries thereof; that no adverse claim was filed by the defendant herein or on his behalf within the period of 60 days allowed therefor in which plaintiff's application for patent was published; that no adverse claim was ever filed to plaintiff's said application by defendant or on his behalf claiming that a vein or lode existed within the bounda-
6 ries of said placer claim; that by reason of the failure of defendant to file such adverse claim he is now estopped from asserting or maintaining any right or interest to said mining placer ground or any part, or to the possession thereof or any part; that the defendant herein claims some right or interest in and to a part of said placer-mining claim under a location thereof as the Betsy

Dahl lode, and has applied for a United States patent for said Betsy Dahl claim, including the following-described portion of the said placer-mining claim owned by plaintiff, to wit: Beginning at the point of intersection of the south side line of the Betsy Dahl claim, as surveyed, with the east side line of said placer-mining claim, from which corner No. 1 of the Betsy Dahl lode bears north 89° 45′ east, three hundred and fifty-seven feet distant, and running thence north five hundred and forty-eight feet; thence south 89 deg. 45′ west three hundred seventy-four feet; thence south 24 deg. 45′ west seventy-five feet; thence south 88 deg. west two hundred and fifty-five feet; thence south four hundred and seventy-two feet; thence
7 north 89 deg. 45′ east six hundred sixty feet to the place of beginning.

Plaintiff states that the application of the defendant for patent, if unresisted, will defeat plaintiff's right to the possession of said premises and the enjoyment of the same; that plaintiff, within the time allowed by law, filed in the land office his protest and adverse claim to the application of defendant, and brings this action to have determined its right to the possession of the premises mentioned. Wherefore and by reason of the premises plaintiff prays the judgment and decree of the court—

First. That defendant be adjudged the rightful owner and entitled to the possession of the premises described and in controversy in this action and every part thereof.

Second. That defendant is not the owner of said premises or entitled to the possession thereof or any part.

Third. Plaintiff prays judgment, and for such other and further relief as it is entitled to and justice and equity require.

Fourth. Plaintiff prays for judgment for costs.

S. DE WOLFE,
Att'y for Plaintiff.

8 TERRITORY OF MONTANA, } ss:
Silver Bow County, }

Saly Raunheim, being duly sworn, on his oath says: The plaintiff, Montana Copper Company, is a corporation. I am an officer of said corporation, to wit, a trustee of said corporation. The facts stated in the foregoing amended complaint are true to the best of my knowledge, information, and belief.

SALY RAUNHEIM.

Subscribed and sworn to before me this 27th day of March, 1884.

CHARLES S. WARREN,
Notary Public.

Filed March 27, 1884.

R. L. DAVIS, *Clerk,*
By CHAS. S. WARREN,
Deputy Clerk.

Answer to Amended Complaint.

Second Judicial Dist. Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY
vs.
HENRY C. DAHL.

9 The defendant above-named answers the amended complaint of plaintiff and denies that the plaintiff is the owner (except as to the United States or otherwise) or is in the possession or is entitled to the possession of the premises described in said complaint, as situated in Silver Bow county, Montana Territory, consisting of 20 acres of placer-mining ground as [and] in said amended complaint described as the west half of the southwest quarter of section 8, township 3 north, range 7 west, principal base meridian Montana Territory, or any part thereof, or that said premises or any of them were ever duly or in any way claimed or located, as a placer-mining claim or otherwise, by Geo. Marsh or any one on May 26, 1879, or at any time, or that said pretended locator ever conveyed any right, title, or interest in or to the said premises, or that plaintiff is the grantee or owner of said premises or any part thereof, or that said premises are placer-mining ground. As to the allegation in pl'ff's amended complaint, commencing at line
10 14, page 1 (line 22, page 3, of this transcript), and extending to line 22, page 1, of the same (line 22, page 4, of this transcript), as to the corporate character of plaintiff, defendant says that he has no knowledge, information, or belief upon said matter to enable him to answer said allegations, and that said matters are peculiarly within the knowledge of pl'ff, and defendant therefore denies each and every of said allegations.

Defendant denies that plaintiff or its grantors or predecessors in interest or any of them in said premises have in all or any respects complied with all or any of the laws of the United States or Montana Territory or with all or any of the local rules or regulations of miners relating to said pretended mining — of plaintiff, or that by virtue thereof or otherwise or at all pl'ff is the owner of or entitled to the possession or, exclusive or otherwise, right of possession or enjoyment of said premises or any part thereof.

As to the allegations in said amended complaint from line
11 28, page 3, to line 4, page 4 (line 7, page 4, to line 23, page 4, of this transcript), defendant alleges that he has no knowledge, information, or belief sufficient to enable him to answer said allegations so far as they relate to acts of plaintiff, and that he has no knowledge — information as to said matters, and he therefore denies that on or about the 19th day of November, 1880, or at any time, plaintiff filed his application for patent for said premises or pretended placer-mining claim, or that said application for patent was ever published. Defendant denies that no vein or lode was known to exist within the boundaries of said pretended placer claim at the time when pl'ff alleges it made said application, or that none

is known to exist within the same. Denies that by any failure of def't to file any adverse claim to any alleged application for patent by pl'ff it is now estopped from asserting or maintaining any right or interest to said pretended placer-mining claim or any part, or to the possession thereof.

12 Defendant admits that he claims a right and interest in and to a portion of said premises, and has applied to the United States for a patent therefor as a part of the Betsy Dahl quartz lode claim, and that said Betsy Dahl claim includes a portion of pl'ff's said pretended placer-mining claim, which said portion in conflict is correctly described, beginning at line 15, page 4, and extending to line 6, page 5, of the said amended complaint (line 29, page 4, to line 7, page 5, of this transcript). For a separate and further defense to pl'ff's alleged cause of action and an affirmative cause of action against pl'ff, defendant alleges that at the day of pl'ff's alleged and pretended application for patent for said premises there was and ever since has been and now is known to exist within the limits of said pretended placer-mining claim a vein or lode of quartz which never was, in said application for patent or otherwise, or now is owned or claimed by the pl'ff or its grantors or predecessors in interest, and whatever application for patent pl'ff ever made for said ground he did not claim said quartz lode or vein, and [which] is

13 now known and called the Betsy Dahl quartz lode mining claim and now owned and claimed by def't, and that defendant at the time of the commencement of this action was, and ever since the 9th day of March, 1881, has been and still is, the owner of, in the possession and entitled to the possession of, the said Betsy Dahl quartz lode mining claim, situated in the south half of the southwest quarter of sec. 8, T. 3 N., R. 7 W., and officially designated as lot No. 120 in said township and range, and in metes and bounds described as follows: Commencing at a granite stone 14 x 12 x 10 inches, set 14 inches in the ground, for corner No. 1, from which the quarter-section corner on the southern boundary of said section 8 bears S. 26 deg. 15′ E., 686 feet (10.39 chains) distant, running thence S. 89 deg. 45′ W. 1,500 feet to a granite stone 18 x 10 x 8 inches, set 14 inches in the ground, for corner No. 2; running thence N. 90 deg. 45′ W. 555 feet to a granite stone 20 x 15 x 18 inches, set 15 inches in the ground, for corner No. 3; running thence N. 89 deg. 45′ E. 1,500 feet to a granite stone 18 x 12 x 10 inches, set 14 inches

14 in the ground, for corner No. 4; running thence S. 90 deg. 45′ E. 555 feet to the point or place of beginning, and that the surface ground included in the above-described boundaries is necessary and essential to the working and development of the said Betsy Dahl lode claim.

That said Betsy Dahl lode claim overlies and includes a portion of said pretended placer claim of pl'ffs, as described in pl'ff's amended complaint, on pages 4 or 5 thereof (page- 4 and 5 of this transcript). Wherefore plaintiff prays judgment as follows:

1. That defendant be substantiated in his title to said Betsy Dahl quartz lode claim, and be decreed to be entitled to the possession to

the — and every part and parcel thereof free from the let, hindrance, or adverse claim of plaintiff.

2. That pl'ff be decreed to have no estate, interest, or title whatsoever in or to the ground and premises described as the said Betsy Dahl lode claim or any part thereof.

3. That pl'ff be forever debarred and enjoined from setting up or asserting any claim whatsoever to said ground or premises or
15 or any part thereof adverse to defendant.

That defendant have judgment for costs, and such further relief as to the court may seem proper.

RANDOLPH & DE WITT,
Defendant's Attorneys.

TERRITORY OF MONTANA, }
County of Silver Bow, }

Henry C. Dahl, being duly sworn, says: I am def't named in the foregoing answer. I have heard read the same and know the contents thereof, and the matters therein stated are true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters I believe it to be true.

HENRY C. DAHL.

Subscribed & sworn to before me this 26th day of March, 1884.

WILLIAM H. DE WITT,
Notary Public, Montana.

Filed March 27, 1884.

R. L. DAVIS, *Clerk*,
By CHARLES S. WARREN,
Deputy Clerk.

16 *Statement on Motion for a New Trial.*

Second Judicial District Court, County of Silver Bow, Montana.

THE MONTANA COPPER COMPANY, Plaintiff, }
vs.
HENRY C. DAHL, Defendant. }

The above cause is one to quiet title. The cause being regularly called for trial on the 8th day of April, 1884, one of the days of the March term, 1884, of the above court, a jury was regularly called, sworn, and empanelled, and the following pleadings, upon which the case was tried, were read to the jury:

Amended Complaint.

Second District Court of Montana Territory, Silver Bow County.

THE MONTANA COPPER COMPANY, Plaintiff, }
vs.
HENRY C. DAHL, Defendant. }

Plaintiff, by leave of the court first had and obtained, makes this his amended complaint herein, and alleges that plaintiff is, and at

all times in the complaint mentioned was, a corporation
17 created under and by virtue of the laws of the State of New York and doing business as such corporation in this county and Territory; that plaintiff is the owner (except as to the United States), in possession, and entitled to the possession of the following-described premises, to wit:

The owner of twenty acres of placer-mining ground described as follows: The west half of the southeast quarter of the southwest quarter of section eight (8), township three (3) north, range seven (7) west, of the principal base and meridian of Montana Territory; that said premises were duly claimed and located as a placer-mining claim by George F. Marsh, May 26, 1879; that by direct and intermediate conveyances from said locator plaintiff is the sole grantee and owner of said premises; that plaintiff and his grantors and predecessors in interest in said premises have in all respects complied with all laws of the United States, of Montana Territory, and with all local rules and regulations of miners relating to said mining claim, and by virtue thereof are the owners of and entitled to the exclusive right of possession and enjoyment of said
18 premises; that on or about the 19th day of November, 1880, plaintiff filed his application for patent for said placer claim and premises; that no vein or lode was known to exist within the boundaries of said placer claim at the time of making said application, nor is any now known to exist within the boundaries thereof; that no adverse claim was filed by the defendant herein or on his behalf within the period of 60 days allowed therefor, in which plaintiff's application for patent was published; that no adverse claim was ever filed to plaintiff's said application by defendant or on his behalf claiming that a vein or lode existed within the boundaries of said placer claim; that by reason of the failure of defendant to file such adverse claim he is now estopped from asserting or maintaining any right or interest to said placer-mining claim or any part or the possession thereof or any part; that the defendant herein claims some right or interest in and to a part of said placer-mining claim under a location thereof as the Betsy Dahl lode, and has applied for a United States patent for said Betsy Dahl lode and has applied for
19 such patent for said Betsy Dahl claim, including the following-described portion of the said placer-mining claim owned by plaintiff, to wit: Beginning at the point of intersection of the south side line of the Betsy Dahl claim as surveyed with the east side line of said placer mining claim, from which corner No. 1 of the Betsy Dahl lode bears north 89 deg. 45′ east, three hundred and fifty-seven feet distant, and running thence north five hundred and forty-eight feet; thence south 89 deg. 45′ west three hundred seventy-four feet; thence south 24 deg. 45′ west seventy-five feet; thence south 88 deg. west two hundred and fifty-five feet; thence south four hundred and seventy-two feet; thence north 89 deg. 45′ east six hundred and sixty feet to the place of beginning. Plaintiff states that the application of the defendant for patent if unresisted will defeat plaintiff's right to the possession of said premises and the enjoyment of the same; that plaintiff, within the time

allowed by law, filed in the land office his protest and adverse claim to the application of defendant, and brings this action to
20 have determined its right to the possession of the premises mentioned.

Wherefore and by reason of the premises plaintiff prays the judgment and decree of the court—

First. That plaintiff be adjudged the rightful owner, and entitled to the possession of the premises described and in controversy in this action and every part thereof.

Second. That defendant is not the owner of said premises or entitled to the possession thereof or any part.

Third. Plaintiff prays for such other and further relief as it is entitled to and justice and equity requires.

Fourth. Plaintiff prays for judgment for costs.

S. DE WOLFE,
Att'y for Plaintiff.

TERRITORY OF MONTANA, } ss:
Silver Bow County, }

Saly Raunheim, being duly sworn, on his oath says: The plaintiff, Montana Copper Company, is a corporation. I am an officer of said corporation, to wit, a trustee of said corporation. The
21 facts stated in the foregoing amended complaint are true to the best of my knowledge, information, and belief.

SALY RAUNHEIM.

Subscribed and sworn to before me this 27th day of March, 1884.

R. L. DAVIS, *Clerk,*
By CHAS. S. WARREN, *D'y Clerk.*

Answer to Amended Complaint.

Second Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY }
vs.
HENRY C. DAHL. }

The defendant above named answers the amended complaint of plaintiff, and denies that the pl'ff is the owner (except as to the United States or otherwise) or is in possession or is entitled to the possession of the premises described in said complaint as situated in Silver Bow county, Montana Territory, cons-ting of 20 acres of placer-mining ground, as in said amended complaint de-
22 scribed as the west half of the southwest quarter of section 8, township 3 north, range 7 west, principal base meridian Montana Territory, or any part thereof, or that said premises or any of them were ever duly or in any way claimed or located, as a placer-mining claim or otherwise, by Geo. Marsh or any one, on May 26, 1879, or at any time, or that said pretended locator ever conveyed any right, title, or interest in or to the said premises, or that plaintiff is the grantee or owner of said premises or any part thereof, or

that said premises are placer-mining ground. As to the allegation in plaintiff's amended complaint, commencing at line 14, page 1 (line —, page —, of this transcript), and extending to line 22, page 1 of the same (line —, page —, of this transcript), as to the corporate character of plaintiff, defendant says that he has no knowledge, information, — belief upon said matter to enable him to answer said allegations, and that said matters are peculiarly within the knowledge of pl'ff, and defendant therefore denies each and every of said allegations. Defendant denies that pl'ff or his grantors
23 or predecessors in interest or any of them in said premises have in all or in any respects complied with all or any of the laws of the United States or Montana Territory, or with all or any of the local rules or regulations of miners relating to said pretended mining claim of pl'ff, or that by virtue thereof or otherwise or at all pl'ff is the owner of or entitled to the possession or exclusive, or otherwise, right of possession or enjoyment of said premises or any part thereof. As to the allegations contained in said amended complaint from line 28, page 2, to line 4, page 4 (line —, page —, to line —, page —, of this transcript), def't alleges that he has no knowledge, information, or belief sufficient to enable him to answer said allegations so far as they relate to acts of pl'ff, and that he has no knowledge, information, or belief as to said matters, and he therefore denies that on or about the 19th day of November, 1880, or at any other time, pl'ff filed his application for patent for said pretended placer-mining claim or premises, or that said ap-
24 plication for patent was ever published.

Defendant denies that no vein or lode was known to exist within the boundaries of said pretended placer claim at the time when pl'ff alleges it made said application, or that none is known to exist within the same.

Denies that by any failure of def't to file any adverse claim to any alleged application for patent by pl'ff he is now estopped from asserting or maintaining any right or interest to said pretended placer mining claim or any part thereof.

Def't admits that he claims a right and interest in and to a portion of said premises, and has applied to the United States for patent therefor, as a part of the Betsy Dahl quartz lode claim, and that said Betsy Dahl claim includes a portion of pl'ff's said pretended placer mining claim, which said portion in conflict is correctly described, beginning at line 15, page 4, and extending to line 6, page 5, of the said amended complaint (line —, page —, of this transcript).

25 For a separate and further defense to plaintiff's alleged cause of action and an affirmative cause of action against pl'ff, def't alleges that at the day of pl'ff's alleged and pretended application for patent for said premises there was, and ever since has been and now is, known to exist within the limits of said pretended placer mining claim a vein or lode of quartz which never was in said application for patent or otherwise or now is owned or claimed by the pl'ff or its grantors or predecessors in interest, and whatever application for patent pl'ff ever made for said ground, he did not

claim said quartz lode or vein, and is now known and called the Betsy Dahl quartz lode mining claim and now owned and claimed by def't, and that def't, at the time of the commencement of this action, was, and ever since the 9th day of March, 1881, has been and still is, the owner of, in the possession and entitled to the possession of, the said Betsy Dahl quartz lode mining claim, situated in the south half of the southwest quarter of sec. 8, T. 3 N., R. 7 W., and officially designated as lot No. 120, in said township and
26 range, and in metes and bounds described as follows:

Commencing at a granite stone 14 x 12 x 10 inches, set 14 inches in the ground, for corner No. 1, from which the quarter-section corner on the southern boundary of said section 8 bears S. 26 deg. 15′ E., 686 feet (10.39 chains) distant, running thence S. 89 deg. 45′ W. 1,500 feet to a granite stone 18 x 10 x 8 inches, set 14 inches in the ground, for corner No. 2; running thence N. 90 deg. 45′ W. 555 feet to a granite stone 20 x 15 x 18 inches, set 15 inches in the ground, for corner No. 3; running thence N. 89 deg. 45′ E. 1,500 feet to a granite stone 18 x 12 x 10 inches, set in the ground, for corner No. 4; running thence S. 90 deg. 45′ E. 555 feet to the point or place of beginning, and that the surface ground included in the above-described boundaries is necessary and essential to the working and development of the said Betsy Dahl lode claim; that said Betsy Dahl lode claim overlies and includes a portion of said pretended placer-mining claim of pl'ffs, as described in pl'ff's amended complaint, on pages 4 or [and] 5 thereof (page- — and —
27 of this transcript).

Wherefore pl'ff prays judgment as follows:

First. That def't be substantiated in his title to said Betsy Dahl quartz lode claim, and be decreed to be entitled to the possession of the same and every part and parcel thereof free from the let, hindrance, or adverse claim of pl'ff.

2. That pl'ff be decreed to have no estate, interest, or title whatsoever in or to the ground and premises described as the said Betsy Dahl lode claim or any part thereof.

3. That pl'ff be forever debarred and enjoined from setting up or asserting any claim whatsoever to said ground or premises or any part thereof adverse to def't.

4. That def't have judgment for costs, and such further relief as to the court may seem proper.

RANDOLPH & DE WITT,
Def't's Attorneys.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Henry C. Dahl, being duly sworn, says: I am def't named
28 in the foregoing answer. I have heard read the same and know the contents thereof, and the matters therein stated are true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters I believe it to be true.

HENRY C. DAHL.

Subscribed and sworn to before me this 26th day of March, 1884.

WILLIAM H. DE WITT,
Notary Public, Montana.

Filed M'ch 27, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

Articles of Incorporation.

STATE OF NEW YORK, } ss:
City & County of New York, }

We, Leonard Lewishon, Adolph Lewishon, Albert Steiner, of the city of New York, and Gustav E. Behr, of the city of Brooklyn, in the State of New York, do hereby certify that we desire to form a company pursuant to the provisions of an act entitled "An
29 act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and of the several acts extending and amending said act.

The corporate name of the company is to be "Montana Copper Company," and the objects for which the company is to be formed are the mining and smelting of copper and other minerals and vending the same. The amount of the capital stock of the said company is to be seventy-five thousand dollars.

The term of the existence of the said company is to be fifty years. The number of shares of which *the shares of which* the said stock is to consist is to be three thousand, of the value of twenty-five dollars per share.

The number of trustees, who shall manage the concerns of said company, shall be four, and the names of such trustees for the first year are Leonard Lewishon, Adolph Lewishon, Albert Steiner, and Gustav E. Behr.

The said company is formed for the purpose of carrying on some part of its business out of the State of New York, namely, at Butte, Deer Lodge county, Montana Territory, and the name of the
30 city and county in which the principal part of the business of the company is to be transacted are the city and county of New York.

LEONARD LEWISHON.
ADOLPH LEWISHON.
ALBERT STEINER.
G. E. BEHR.

CITY AND COUNTY OF NEW YORK, ss:

On this sixteenth day of October, A. D. 1879, before me personally appeared Leonard Lewishon, Adolph Lewishon, Albert Steiner, and Gustav E. Behr, to me known to be the individuals described in and who executed the foregoing certificate, and they severally before

me signed the said certificate and acknowledged that they signed the same for the purposes therein mentioned.

[NOTARIAL SEAL.] WM. H. HEWSON,
Notary Public, Kings County & N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

31 I, Hubert O. Thompson, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county of New York, the same being a court of record, do hereby certify that Wm. H. Hewson has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgement of the annexed instrument duly authorized to take the same.

And, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal—court and county—the 16th day of October, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

32 I, Hubert O. Thompson, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of incorporation of Montana Copper Company on file in my office, and that the same is a correct duplicate therefrom and of the whole of such original.

Endorsed: Filed 16th Oct., 1879.

In witness whereof I have hereunto subscribed my name and affixed my official seal this sixteenth day of October, 1879.

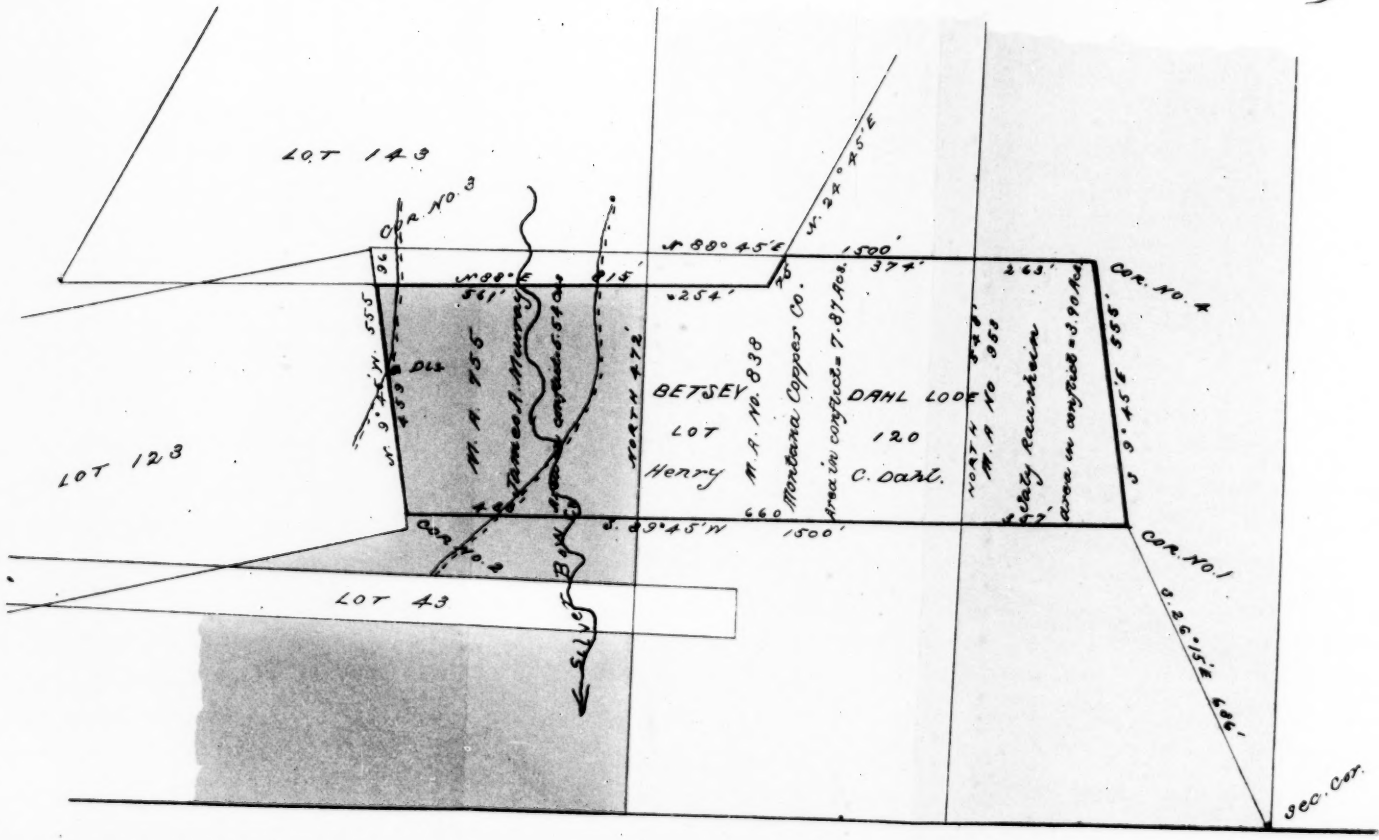
[SEAL.] HUBERT O. THOMPSON, *Clerk.*

STATE OF NEW YORK, }
Office of the Secretary of State, } *ss:*

I have compared the preceding with the duplicate original certificate of incorporation of the "Montana Copper Company," with acknowledgement thereto annexed, filed in this office on the seventeenth day of October, 1879, and do hereby certify the same to be a correct transcript therefrom and of the whole of said duplicate original.

No 353
Dahl
vs.
Montana
Copper Co.

SILVER BOW COUNTY M. T
T. 3 N. R. 7 W
Section 8



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35

33 Witness my hand and the seal of office of the secretary of state, at the city of Albany, this 17th day of October, one thousand eight hundred and seventy-nine.

[Seal of the Sec'y's Office, N. Y.]

GEORGE MOSS,
Deputy Secretary of State.

p. 35.

Filed for record March 19, 1880, at 4.30 o'clock p. m.

J. E. DICKEY,
County Recorder,
By L. E. DANJER, *Deputy.*

Endorsement: Filed for record in the office of the secretary Montana Territory March 17, 1879. J. H. Mills, secretary. Recorded in Book "B," pp. 32, &c., of Incorporations.

TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

I, Thomas F. Ward, county clerk and recorder in and for Deer Lodge county, Montana Territory, do hereby certify that the annexed and foregoing is a true, full, and correct copy of the articles of incorporation of the "Montana Copper Company" as the same appears recorded in Book "H" of Miscellaneous Records of Deer Lodge county, Mont., at page 163.

In testimony whereof I have hereunto set my hand and
34 affixed the county seal on this 28th day of March, A. D. 1884.

THOMAS F. WARD,
County Clerk and Recorder.

Witnesses were then called, sworn, and examined on the part of plaintiff, the names of whom and their testimony in full are as follows, to wit, with the objections by counsel and exceptions and the exhibits introduced in evidence:

GEORGE F. MARSH, called and sworn, testified as follows:

"I reside in Butte City. I know where the west ½ of the S. E. ¼ of the S. W. ¼ of sec. 8, T. 3 N., R. 8 W., is. It lies on the east side of Silver Bow creek, north of the Montana Copper Co.'s works, and adjoining the ground the Co.'s works are on."

Map shown witness. Map here referred to is attached hereto, as follows:

(Here follows map marked page 35.)

35 Map.

36 "Here are the premises. The ground colored yellow is within the 20-acres tract described. The pink is outside. I have been on that ground a great many times. I located that tract

as a placer mining ground in 1879 or 1880; I don't know which. This is the notice of location I made out myself. I posted a copy of this on the ground."

What did you do with this paper?

"I had it filed for record."

Notice of Placer Mining Location.

Notice is hereby given that the undersigned, having complied with the requirements of chapter six of title thirty-two of the Revised Statutes of the United States and the local laws, rules, and regulations and customs of miners, has located twenty acres (20) of placer-mining ground situated in locality known as Summit Valley mining district, Deer Lodge county, Montana, and being more particularly described as follows, to wit, being the W. ½ of the S. E. ¼ of the S. W. ¼ of sec. No. 8, in T. 3 N., R. 7 W., principal meridian Montana, containing twenty (20) acres of legal sudivisions, upon which a copy of this notice is posted.

37 GEO. F. MARSH.

Located May 26, 1879.

Attest: WM. W. JACK.

TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

Geo. F. Marsh, being first duly sworn according to law, deposes and says that he is the person whose name is subscribed to and who subscribed the foregoing notice of location, and that the matters and facts therein contained which are made a part of this affidavit are true: Further, that he is a citizen of the United States and a *bona fide* resident of Montana.

GEO. F. MARSH.

Subscribed and sworn to before me this 26th day of May, A. D. 1879.

[SEAL.] A. H. BARRETT,
Notary Public.

Endorsed: Filed for record May 28, A. D. 1879, at 5.10 o'clock p. m. J. E. Dickey, county recorder.

38 Objected to as incompetent and immaterial and not best proof.

Objection overruled and exception noted.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't. } Def't's Bill of Exceptions No. 1.

The above case being on trial April 8, 1884, one of the days of the March term, 1884, of the above court, the plaintiff offered in evidence a location notice of the placer-mining ground claimed by

plaintiff, and including the ground in controversy, which said notice the witness, Geo. F. Marsh, testified he, as locator of said ground, *and* had posted on the ground and had recorded in the office of the county recorder, which said notice is hereby referred to and made a part of this bill of exceptions; and def't's counsel object, for the reason that there is no provision of law for any such record, and that the law of the 13th session of the Legislative Assembly of Montana does not allow it to be introduced in evidence, because it is admitted by the pleadings that the rights of def't herein have
39 intervened between the said recording and the passage of said law; which objection is by the court overruled and said notice admitted in evidence and marked "Exhibit B," and to which ruling the def't, by his counsel, duly excepts, and asks that his bill of exceptions be signed, which is accordingly done this 8th day of April, 1884.

W. J. GALBRAITH,
Judge 2d Jud. District Court.

"I filed that record in the county clerk's office."

Certified copy of location notice offered in evidence.
Objected to, and objection overruled.
Exception noted.
Location notice read to jury.

"This is my signature, and I made that affidavit. I posted a copy of that notice without the affidavit, giving a description of the ground, on the claim, and afterwards filed this for record. Afterwards I sold the premises to the Montana Copper Company and Mr. Raunheim."

Deed shown witness.

"I recognize this; it is my writing. I sold the ground described here to Mr. Meader. This is the deed conveying the property."

Admitted in evidence and read to the jury.

40 *Deed.*

This indenture, made the twenty-third day of July, A. D. 1879, between Geo. F. Marsh and Lizzie O. Marsh, his wife, parties of the first part, and Charles T. Meader, party of the second part, all of Deer Lodge county, Territory of Montana, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell, unto the said party of the second part and to his heirs and assigns forever all of that certain piece or parcel of land known and described by legal subdivision as the W. ½ of the S. E. ¼ of the S. W. ¼ of section 8, in township three (3) north, of range (7) west, of the principal meridian Montana, and containing twenty (20) acres, together with all and singular the hereditaments and appurtenances thereto be-

longing or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, claim, or demand
41 whatsoever of them, the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises and every part and parcel thereof; to have and to hold unto the said party of the second part, his heirs and assigns, to the sole and only proper benefit and behalf of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set our hands and seals the day and year first above written.

GEO. F. MARSH.
LIZZIE O. MARSH.

TERRITORY OF MONTANA, }
County of Deer Lodge, }

On this 23d day of July, A. D. 1879, personally appeared before me, a notary public in and for the Territory of Montana, Geo. F. Marsh and Lizzie O. Marsh, his wife, personally known to me to be the same parties described — and who subscribed to the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes
42 therein mentioned; and the said Lizzie O. Marsh, wife of the said Geo. F. Marsh, upon an examination separate and apart from her husband, acknowledged that she had executed the said conveyance freely and without any fear or compulsion of her husband.

J. R. CLARK,
Notary Public, Montana.

Endorsement: Filed for record Nov. 4, A. D. 1879, at 6.10 o'clock p. m. J. E. Dickey, county recorder.

"This ground was returned by the surveyor to the land office as mineral land and was held to be placer ground. I never worked on the claim."

Cross-examined:

"That ground was returned to the surveyor general's office as mineral land. I never did any placer mining there. I did nothing further than to record this notice and put a copy on the claim. I never did any mining there. I do not know anything of the
43 character of the ground except from the surveyor's return to the land office."

JAMES A. TALBOTT called, sworn, and testified as follows:

"My occupation is mining and milling. I have been engaged in it for seven years. I know where the Montana Copper Co.'s works are. I am familiar with the premises each of Silver Bow creek and south of Montana Copper Co.'s works. I think I know the character of that ground. I have examined the ground below there, but never worked on it. I examined it probably 350 feet below, and

from my examination I would call it placer-mining ground. I satisfied myself there is gold there, for I have panned it out. I have been over this ground clear up to the Montana Copper Co.'s works. I do not know of any lead or lode existing on any portion of that ground. I never saw any croppings or evidences of a lead there."

Cross-examined:

"I worked about 350 feet below Montana Copper Co.'s
44 works. I just prospected. There were pits sunk there by somebody else. I found colors; I didn't weigh them; I don't think they would pay to work. I don't remember how it come out to the pan. I just got colors; not enough to pay me to handle. I did no work immediately on this ground."

Deed from Chas. T. Meader to plaintiff admitted in evidence and read to the jury.

Deed.

This indenture, made and entered into in the city of Butte, Deer Lodge county, Montana Territory, on this the third day of November, A. D. eighteen hundred and seventy-nine (1879), by and between Charles T. Meader, of said city and Territory, party of the first part, and the Montana Copper Company of New York, a corporation duly formed and existing under the laws of the State of New York, the party of the second part, witnesseth:

The party of the first part, for and in consideration of the sum of forty thousand ($40,000.00) dollars, lawful money of the United States, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, before the signing
45 and sealing these presents, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and confirm, to said party of the second part and to its successors in in interest and assigns forever the following-described mining property, situate and being in Summit Valley mining district, Deer Lodge county, Montana Territory, to wit: * * * also all that certain piece or parcel of land known and described by legal subdivisions as the west half of the southeast quarter of the southwest quarter of section number eight (8), in township three (3) north, of range seven (7) west, of the principal meridian of Montana, and containing twenty acres of ground, being the same premises located by George F. Marsh as a placer-mining location on May 26, 1879, together with all the metals and ores contained therein, with the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining; also that certain other tract, &c.; * * * also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of said party
46 of the first part of, in, or to the within-conveyed premises and every part and parcel thereof; to have and to hold the same unto the said party of the second part, its successors and assigns, forever, together with the appurtenances.

In witness whereof the party of the first part does hereunto set his hand and seal on the day and year first above written.

CHARLES T. MEADER. [SEAL.]

Witnesses:

Signed, sealed, and delivered in presence of—
S. DE WOLFE.
J. B. MEADER.

TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

Personally appeared before me Charles T. Meader, to me personally known to be the person who signed the above and foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I do hereunto sign my name and affix my notarial seal, at Butte City, Montana Territory, on the 3rd day of November, A. D. 1879.

47 [SEAL.] JAMES R. CLARK,
Notary Public.

Endorsement: Filed for record Nov. 4, A. D. 1879, at 6.20 o'clock p. m. J. E. Dickey, county recorder.

Affidavit of Adkinson offered.

Objected to by counsel for def't on the ground that it is incompetent, in that it purports to describe certain records in the United States land office and don't give the records, and that it is immaterial and irrelevant.

Objection overruled and excepted to.

MONTANA COPPER COMPANY, Pl'ff, }
vs.
HENRY C. DAHL, Def't. }

Def't's Bill of Exception No. 2.

The above cause being on trial on April 8, 1884, one of the days of the March term, 1884, of the above court, the pl'ff offers in evi-
48 dence the affidavit of F. Adkinson; which affidavit is hereby referred to and made a part of this bill of exceptions; to the introduction in evidence of which def't objects, for the reason that it is immaterial and irrelevant and incompetent in this, that it purports to describe certain records in the United States land office, but does not give a copy of said records, and is simply an *ex parte* affidavit; which objection is by the court overruled and said affidavit is received in evidence and marked "Exhibit E;" to which ruling of the court in overruling said objection and receiving said affidavit in evidence the def't duly excepts, and asks that this bill of

exceptions be signed, which is accordingly done this 8th day of April, 1884.

WM. J. GALBRAITH,
Judge 2d Jud. Dist. Court.

Endorsement: Filed April 9, 1884. R. L. Davis, clerk, by Chas. S. Warren, deputy clerk.

H. T. BROWN called, sworn, and testified for pl'ff as follows:

"I live at Butte City, M. T. In the month of November,
49 1880, I was business manager of the 'Daily Miner,' published here. I have the file, but they are not bound and not easy to handle. Here is one dated Dec. 14, 1880. Mineral application No. 838 is published in the issue of Nov. 23, 1880. The first publication was Nov. 23, 1880, and the last was the 24th of January following, covering a period of 60 days. The register of the land office directed its publication."

Application for patent offered in evidence.

Objected to as immaterial, irrelevant, and not the best evidence; objection overruled; def't excepts.

No. 838.

Application for Patent.

U. S. LAND OFFICE, HELENA, M. T., *November* 19, 1880.

Notice is hereby given that the Montana Copper Company, a body politic and corporate duly incorporated under the laws of the State of New York, by Saly Raunheim, its duly authorized agent, whose post-office address is Butte City, Deer Lodge county,
50 Montana Territory, has this day filed application for patent for thirty-nine and ninety-five hundredths (39.95) acres placer-mining ground situated in Summit Valley mining district, Deer Lodge county, Montana Territory, in section No. 8, T. No. 3 N. of R. No. 7 W. Said claim is recorded in the office of the county clerk and recorder of said county and more particularly described by legal subdivisions of the public lands, to wit, the west ½ of lot No. 6 and the W. ½ of the N. E. ¼ of the S. W. ¼ of sec. No. 8, T. No. 3 N. of R. No. 7 W. of the principal meridian Montana Territory, embracing 39.95 acres, upon which a notice of said application was posted on the — day of September, 1880.

The adjoining claimants to these premises are R. S. Jones *et al.* on the south and James A. Murray *et al.* on the west. On the north and east claimants are unknown. Any and all persons claiming adversely any portion of said mine or surface ground are required to file their adverse claims with the register of the United States land office at Helena, Lewis and Clarke county, Montana
51 Territory during the sixty days publication hereof, or they will be barred by virtue of the provisions of the statute.

J. H. MOE, *Register.*

S. DE WOLFE,
Att'y for Applicant.

Second Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Defendant's Bill of Exceptions No. 4.

The above case being on trial April 8, 1884, one of the days of the March term, 1884, of the above court, H. T. Brown, a witness for pl'ff, duly called, sworn, and examined, testified: "I am managing agent of the Miner Publishing Company and was from November 23, 1880, to January 24, 1881. Said company then published the Daily Miner newspaper in Butte, Silver Bow county, Montana. From the 23d day of November, 1880, to the 24th day of January, 1881,
we published a notice of application for patent by the order
52 of the register of the U. S. land office at Helena, Montana, for mineral application No 838 by the pl'ff, embracing the ground in controversy in this action." Pl'ff then offers in evidence the notice of application for patent No. 838 for the ground in controversy as published in said newspaper. Def't objects, because it is not shown by the records of said U. S. land office that such an application was ever made; which objection was by the court overruled; to which ruling of the court the def't, by counsel, duly excepts, and asks that this his bill of exceptions be signed, which accordingly is done this 8th day of April, 1884.

WM. J. GALBRAITH,
Judge 2nd Jud. Dist. Court, Montana.

Endorsement: Filed April 9, 1884. R. L. Davis, clerk, by Chas S. Warren, dep-ty clerk.

S. DE WOLFE sworn, and testified as follows:

"I made the application for U. S. patent for this ground as attorney for the copper Co., and the papers were all duly filed
53 in the land office at Helena. I have seen the papers there."

Objected to on the ground that the testimony is incompetent, for the reason that the application is a matter of record in the U. S. land office, and is the best evidence. The application should be proved by the record; objection overruled; defendant excepts.

Application read to jury as before copied.

2nd Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Defendant's Bill of Exceptions No. 3.

The above cause being on trial April 8, 1884, one of — days of the March term, 1884, of the above court, Stephen De Wolfe, a wit-

ness for plaintiff, testified that at about the time mentioned in the complaint, he, as attorney for the pl'ff, made out papers for application for U. S. patent to the U. S. land office for mineral application No. 838, embracing the ground in controversy, and that said
54 application for patent was made upon said papers. There was not in evidence the records of said application from the U. S. land office, except the affidavit of F. Adkinson referred to in def't's bill of exceptions No. 2, to which reference is hereby made, and the same is hereby made a part of this bill of exceptions.

To which aforesaid evidence of the witness, Stephen De Wolfe, def't, by his counsel, duly objects, as said evidence was being given, for the reason that it was incompetent in this, that the best evidence is the record of the U. S. land office, and there is no evidence to show why said best evidence is not produced, and therefore the testimony of said witness is incompetent; which said objection is by the court overruled, and said evidence of Stephen De Wolfe is allowed by the court to go to the jury; to which ruling of the court the defendant duly excepts, and ask that this his bill of exceptions be signed, which is done this 8th day of April, 1884.

WM. J. GALBRAITH,
Judge 2nd Jud. Dist. Court.

Endorsement: Filed April 9, 1884. R. L. Davis, clerk, by Chas. S. Warren, deputy clerk.

55 SALY RAUNHEIM called and sworn for plaintiff, and testified as follows:

"In 1880 I was the duly authorized agent and general manager of the Montana Copper Co. I know where the premises in controversy are. I have lived there for years; that diagram correctly represents the property; this part colored yellow represents the ground in dispute in this action; this is the 20-acre tract; the application for patent included more than 20 acres. I am very familiar with the ground there. I never dug any holes myself, but I had other parties do it. I have had work done there, and there, and there, and here, and here (pointing on map). Here is the shaft; that is outside. I have frequently examined the surface of that ground; there are no indications on the surface of the existence of a lead or vein on the portion colored yellow; no croppings can be seen there. I never saw any indications of a lead there."

Cross-examined: No questions.

W. P. EMERY called and sworn for plaintiff, and testified as
56 follows:

"I am district recorder of this mining district, and have been ever since 1877, continuously. I am the placer-mining recorder. This is the Summit Valley mining district. I have the books of the district in my possession; they are here in court; with a little time I could find the boundaries of the district."

JAMES P. MATTINGLY called and sworn for plaintiff, and testified as follows:

"I am a miner; have been mining since 1868, in various places in Montana. I have mined east of the Silver Bow creek—about 1,540 feet east of the Copper Smelter. (Map shown witness.) I worked about there. I never mined any in that portion colored yellow. The ground where I prospected is generally uniform in formation. I prospected there in 1880, and found dirt that would pay. I averaged it and found it would pay ten cents to the pan; that was 1,340 feet from the east line; over here I got six cents to the pan, in a pit 4 feet 10 inches deep and 4 by 6 square, with
57 gravel; that was in 1881 I mined there; that was free gold—placer gold; this ground embraced in the yellow is of the same formation as that. I have been over that ground colored yellow. I have been across it, backwards and forwards; there are no croppings there or indications of a lead; the ground is very deep; it was forty-seven feet where I got the gold; the ground is similar all over."

Cross-examined:

"Where I got six cents to the pan was 46 feet deep. I had a claim there. With free water that ground would pay $4.50 to the man a day; at that depth it would pay more. That ground would pay with free water. I quit because I had to buy water. I could make $4.50 with free water shovelling in. I don't know what it would cost to get water there. I found I couldn't get water from the ditch company and didn't prospect any further. I went to work there to see if there were any leads there. I understood Upton & Co. owned the water, but I didn't make any special enquiries to see if it was for sale or not. I had better ground,
58 that paid better than that, that I didn't work on."

W. P. EMERY recalled, and testified as follows:

"These are the only books of records of mines in this district that I I ever knew of. The boundaries of Summit Valley mining district are as follows: 'Beginning at a point on Silver Bow creek due south of the Big Butte, thence running north to said Butte; thence following the divide to the summit; thence following the Silver Bow creek to the starting point.' That is the original boundaries, but they were changed or amended. The amendment was made on the 17th day of August, 1880, by the miners of Summit Valley mining district, at the residence of George H. Long. R. S. Jones was president of the meeting. The record reads: 'Pursuant to previous notice the placer miners of Summit Valley min'g district, convened at the residence of George H. Long, on the 17th day of August, 1880, at which R. S. Jones was president, at which the following action was had.' That is the heading. Then it goes on: 'A motion was
59 made and adopted to amend section 2 of the by-laws to read as follows.'

"I read section 2. Now, the amendment reads as follows: 'The

boundaries of Summit Valley mining district shall be as follows: Beginning at a point on Silver Bow creek due south of the Big Butte; thence following the divide between the head of Beef Straight gulch and Silver Bow creek; thence due east to Silver Bow creek; thence following Silver Bow creek to the starting point. The east boundary is Silver Bow creek.'"

Cross-examined:

"In what direction, after you get to the Big Butte, does it run?

It follows the divide.

What divide—the main divide of the Rocky Mountains?

The summit of the divide between the head of Beef Straight and Silver Bow creek.

Beef Straight is to the west; it goes to the head of Beef Straight gulch?

Yes, sir."

And then in which direction?

Due east to Silver Bow creek.

Then where?

60 Down Silver Bow creek to the starting point.

South of the Big Butte?

Yes, sir."

That is all.

Redirect: "I don't know whether these laws are still in existence or not. The last meeting was held May 16, 1881."

SALY RAUNHEIM testified as follows, on being recalled:

"The Montana Copper Co. has been in possession of that property ever since Meader conveyed it—the 20-acre tract; we have worked on it; done a good deal more than the necessary work for the patent. I can't state the exact amount; somewhere between $500 and $350,000.00 worth of work. The works of the company are erected there. I filed this notice myself and posted one on the claim."

Cross-examined:

"I said the work done there was between $500.00 and $350,000.00. The nature of it first was to sink shafts for the purpose of placer mining. Then we have works known as the Montana Copper Co.'s works on the other premises. That embraces all kinds of

61 underground work. The Montana Copper Co.'s works are not erected on the ground in question.

Were those works erected for the purpose of placer mining?

No, no; they are smelting works. We have sunk holes and wells there not for the purpose of placer mining; but we might do it now or to-morrow or any day when we think it is for the Co.'s benefit. Whenever we see proper to do it we will do it. The work we did there in the first instance was to do the necessary work required by law to obtain a placer patent for the ground. It is to-day nothing else but placer-mining ground. The holes we sunk to see what

was in the ground and to get water. We used the holes; we used the sand and gravel coming out, for certain purposes, in the smelting works; we used it in the furnaces. I think I know of gold having come out of this ground. I know there was some gold panned out of that ground. The Montana Copper Co. never took any gold out of that ground by placer mining. The company use
the sand and gravel, and I have no doubt they get the con-
62 tents. Of the holes dug there one is 20 feet deep, and the
well on this ground is 48 feet deep. The 20-feet-deep shaft is about 18 feet wide and the other is 4x4. We used the contents of the holes in the smelter—in the furnaces. The Co. never did any ground sluicing there. That work, some of it, was done as early as 1880."

GEORGE E. MILLER called, sworn for pl'ff, and testified as follows:

"I know the premises in controversy. I have been over it often. I live north of it. I live between the portion colored yellow and the works of the Co. I have made a careful examination of the ground. There is no lead or ledge visible and there are no croppings. I examined the ground here at 25 feet and it is the same gravel. It is certainly wash ground, from the appearance of it."

Cross-examined:

"I am superintendent of the Co. I have been there nearly two years. There has several shafts been sunk there. They were sunk for the purpose of prospecting the ground. We used the sand in
the smelter. We never did any washing there; never put
63 up any boxes, or ground sluiced, nor hydraulic mining.
The work was to get the sand and prospect the ground. I never knew of any gold being found there."

Plaintiff rests.

Motion for nonsuit filed, argued and overruled by the court; to which ruling by the court def't, by his counsel, excepts.

Motion for a Nonsuit.

2nd Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

The above cause being on trial April —, 1884, one of the days of the March term, 1884, of the above court, and the plaintiff having closed the testimony, the defendant moves for a nonsuit on the ground that plaintiff has not proved by his evidence a *prima facie* case in this, to wit:

1. That it is not proved by the evidence that the plaintiff
64 had possession of the ground in controversy at the commencement of the action.

2. That it is not proved by the evidence that the ground in controversy is placer-mining ground.

3. That it is not proved by the evidence that the ground in controversy is valuable for placer-mining purposes, or was ever used as such by plaintiff or his grantors or predecessors in interest or any of them.

4. That it is not proved by the evidence that def't or his grantors or predecessors complied with the laws of the United States or any local rules or regulations of miners relative to location or holding placer-mining ground.

5. That it is not proved by the evidence that pl'ff or his grantors ever made any discovery of valuable deposits on the ground in controversy.

6. That it appears from the pleadings and evidence that pl'ff is a foreign corporation, and it is not proved that said plaintiff before commencing this action ever complied with the provisions of the act of the Legislative Assembly of Montana entitled "An act
65 concerning foreign corporations," approved July 22, 1879, and found on pp. 8, 9, & 10, Laws of the Extra Session of the 11th Legislature.

RANDOLPH & DE WITT,
Def't's Attorneys.

Endorsement: Filed April 8, 1884. R. L. Davis, clerk, by Chas. S. Warren, dep. clerk.

2d Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Defendant's Bill of Exceptions No. 5.

The above cause being on trial April 8, 1884, one of the days of the March term, 1884, of the above court, the plaintiff having closed his testimony and rested, the defendant files his motion for a nonsuit; which said motion is hereby referred to and made a part of this bill of exceptions, and defendant asks for a nonsuit upon each
66 of the several grounds set forth in said motion; which said motion is by the court overruled; to which said ruling of the court in overruling said motion for a nonsuit the defendant, by his counsel, duly excepts, and asks that this his bill of exceptions be signed, which is accordingly done this 8th day of April, 1884.

WM. J. GALBRAITH, *Judge.*

Endorsement: Filed April 9, 1884. R. L. Davis, clerk, by Charles S. Warren, dep'ty clerk.

JOSEPH H. HARPER, called and sworn for def't, testified as follows:

"I am a civil engineer. I made this map. The portion tinted yellow represents the application made by the Montana Copper Co. for patent."

Mr. DE WOLFE: I will admit that this map correctly describes the ground it purports to.

HENRY C. DAHL, called and sworn for def't, testified as follows:

"I am the def't in this case. This is the Betsy Dahl claim. I
67 am the locator of it. This is the location notice. I posted one at the shaft and sent one to Deer Lodge to be recorded. I sunk a shaft on the west portion of the ground. Right there on the map, that is the discovery represented by that black dot. I sunk that shaft 10 or 15 feet, got the ground surveyed, and placed my corners. I placed one corner there, but it was on the Hattie Harvey and was taken down. Then there is a corner there and one here, making the claim 1,500 feet in length. The corners consisted of round stakes and mounds. I blazed the stakes facing the lead; then I kept sinking on the discovery and found quartz and mineral. It looked to me to be silver rock and copper blossom. The quartz contained silver. I am something of a miner. The assayer found the silver. I didn't assay it. I discovered soft granite on the foot wall. The lead pitches south from the wall, and at the bottom of the shaft 30 feet down it is getting harder. At 15 feet,
68 when I located the lead, the wall was soft granite and showed plainly like the wall of the lead. I put up the notice after I discovered the vein. I worked fully two weeks before I posted the notice on the ground. This a certified copy of the notice I sent to Deer Lodge—no; this is the original notice that I sent to Deer Lodge for record, and the one I posted on the claim was just the same thing."

Location notice objected to by counsel for pl'ff. Objection overruled.

Notice marked "Exhibit G" and admitted in evidence; reading waived.

Location Notice and Declaratory Statement of Discovery of and Claim to Quartz Lode Mining Claim, Betsy Dahl Lode Mining Claim, Summit Valley Mining District, Silver Bow County, Montana Territory.

The undersigned, who is a citizen of the United States or has declared his intention to become such citizen, hereby declare and gives notice to all persons concerned that he has discovered a vein or lode within the limits of the claim hereby located, and in said
69 lode or vein *or* crevice of quartz or ore with at least one well-defined wall, and that he has this 9th day of March, A. D. 1881, located, and does hereby locate and claim, under and by virtue of chapter six of title thirty-two of the Revised Statutes of the United States and the laws amendatory thereto and the laws of the Territory of Montana, a mining claim upon said lode or vein, to be designated and named the Betsy Dahl quartz lode mining claim, extending along said vein or lode 40 feet in a westerly direction and 1,460 feet in an easterly direction from the center of the

discovery shaft (at which shaft this notice and statement is posted) and 300 feet on each side from the middle or center of said lode or vein at the surface, comprising in all 1,500 feet in length along said vein or lode and 600 feet in width, with all the rights and privileges as to the surface ground and lodes, veins, or ledges within the boundaries of said claim and otherwise, and the metals, minerals, and valuable deposits of every kind contained in said veins, lodes, or ledges, or within said boundaries, which are given or allowed by the laws of the United States aforesaid or of the Territory of Montana. The mining claim hereby located is situated in
70 the Summit Valley mining district, Silver Bow county, Montana Territory, and is located, according to the public survey, in the S. W. ¼ of sec. 8, T. 3 N., R. 7 W., base and meridian Montana Territory.

The adjoining claims are the Piscalo lode mining claim on the west and the Hattie Harvey lode claim on the north.

This location is distinctly marked on the ground, so that its boundaries can be readily traced, by a stake set at discovery shaft, where this notice and statement is posted this — day of March, A. D. 1881, and by substantial posts or monuments of stone at each corner of the claim; and the exterior boundaries of the claim, as marked by said posts or monuments, are as follows, to wit:

Beginning at the N. W. corner of the claim, from which the Hattie Harvey shaft bears N. 60 deg. W. 136 feet dist. and the point — main road up Silver Bow creek passes under the tramway of the Montana Copper Company, leading from their hoisting works to their smelting furnace, situated on the east side of Silver Bow creek,
71 bears N. 50 deg. E. 50 feet distant, and running thence S. 10 deg. E. 600 ft. to a stake and mound at the S. W. cor.; thence east across Silver Bow creek 1,500 ft. to the S. E. cor., a stake and mound; thence N. 10 deg. W. 600 ft. to the N. E. cor., a stake and mound; thence west across Silver Bow creek 1,500 ft. to the place of beginning.

The undersigned intends to hold this claim under and according to the laws of the United States and of the Territory of Montana, and to record this notice and statement under oath in the recorder's office of said county, as provided by law.

Dated this 9th day of March, 1881, and signed—

HENRY C. DAHL,
Locator and Claimant.

TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

Henry C. Dahl, being duly sworn, says that he is of lawful age and the locator and claimant of the quartz lode mining claim mentioned and described in the foregoing notice and statement of location and claim and the person whose name is subscribed thereto as a locator and claimant; that he knows the contents of said
72 notice and statement foregoing, and that the matters and things therein stated are true.

HENRY C. DAHL.

Subscribed and sworn to before me this 9th day of March, 1881.
[SEAL.] JOHN H. HARPER,
Notary Public.

Filed for record March 11, A. D. 1881, at 8.10 o'clock a. m., and recorded in Book "A" of Lode Locations, on page 18, records of Silver Bow county, Montana.
JAMES S. McANDREWS,
County Recorder.

"This is the shaft. I had only 40 feet east to get to the end line of the Piccalo lode. I had 1,460 feet the other way. This had been claimed as a quartz location for some time. There is a crevice of quartz in the shaft. It was there when I made the location on the 9 of March. I had men working there then. The notice was put up within 2 feet of the east side of the shaft, on the dump, where it could be readily seen. The stakes were large enough and
73 the mounds about 2½ feet in diameter. I traced that vein a year before I discovered it—in the summer of 1880. I ploughed that ground and I saw some little croppings, and in ploughing up I came into the hard pan. It is about 350 feet from the shaft down to the creek. I lived there since the spring of 1880. There was a vein there visible on the surface then. I saw some croppings sticking up there. I appeared to be a cropping of quartz, and when I come to plough it I found indications of a lead below. The surface indications extended from 75 to 100 feet down this way. This ground is low and more covered up. I have represented that claim each year by doing $100.00 worth of work. I lived there about a year and a half. I lived there about 8 months before I discovered the lead and 8 months afterwards, except 3 weeks I went to the States; that is the only home, in fact, I have. I am the owner of it now, and I have been since the location, except in the summer of 1881. I deeded over a part of it to Gamer, but got it back. I gave that deed as security for a loan. I had to raise money to go to the States. I never conveyed it in
74 any other way. There is no placer mining been done there since I lived there. I never prospected it any. I know there has not been any gold *been* found there. The quartz looked to me to be sufficient to justify me in opening up the lead. In the summer of 1880 I wasn't able to open it up. The rock in the shaft is the same as the rock on top. It is the same as the croppings. I made my discovery here; there were croppings above and below it. Right where I commenced to sink there was no croppings. My location was on what I discovered in 1880. There is a shaft north of that that looks like vein matter. The shaft at the north end is about 30 feet from this one, and I sunk it about 30 feet deep, and found good indications of copper blossom, and then I made a 12-foot cross-cut in the bottom of the shaft. This shaft I sunk 32 feet, and there is a 12-foot cross-cut there running south. This was done last year, and that was done the year before."

Cross-examined:

"I made the location about the 9th of March, but I was working there previous to that time. The claim was staked on the
75 9th of March, 1880. In 1880 I did some surface labor on the ground. I built a house and ploughed up an acre and a quarter of ground. I didn't do anything towards the development of the lead until the spring of 1881. In '81 I sunk the shaft. I made the location in 1881—the 9th of March, '81. That year I sunk the discovery shaft down 30 feet. That was as far as I could go on account of water. Sometimes I had one man to help me, and sometimes two. I didn't figure up the cost of the work. I sunk the shaft north of that 25 feet the same year. In 1882 I hired two men to go and represent the ground, and they sunk the shaft down deeper; the water didn't bother us then. They sunk 30 feet and cross-cut 12 feet in the bottom. Lee and Jim Marks did that work under contract, and I paid them $100.00 cash. In 1883 I had the same men do $100.00 worth of work and paid them. This black line is the Silver Bow creek. It is about 500 feet from the discovery shaft to the west boundary of the yellow-tinted ground here. The croppings could be traced some 75 feet here in the direction of the creek. This is all low ground. I never knew of any gold being taken
76 out there. I know there is a *sold* lead in the bottom of that shaft now. I commenced sinking that discovery shaft the latter part of February, 1881, before I put up the location. I sunk before I put up the location. I sunk for the purpose of finding that lead. In the bottom of the shaft is solid rock; it is the vein."

WILLIAM T. STEVENS called and sworn for def't, and testified as follows:

"I recognize this ground from the map. I know where the Betsy Dahl claim is. I know Dahl, the def't here. I have been mining for a good many years. I am a painter by trade. I have mined and assayed for a good many years. I know where the discovery of the Betsy Dahl is. I examined it when Dahl was sinking on it; it was in 1881. I was running the Concentrator at that time. I took some quartz from the discovery shaft and assayed it; it went from 3 to 12 ounces in silver. The quartz was silica and quartz. When I examined the vein it looked like a vein or solid mass of quartz. There was no wall then. The shaft was only about 12 feet deep. I took those samples, some of them out of the lead and
77 some of them off the dump. I remember of going down the shaft. I never examined the surface there for croppings; never examined it as to its being placer ground. I know the bed-rock comes within a foot of the surface at the discovery shaft."

Cross-examined:

"I made from 3 to 4 assays of rock taken from there. I have assayed for the last 8 or 9 years. I got those samples myself; took them out of the ground myself. At that time I wanted to get in with

Dahl. I didn't give Dahl a certificate of the assays. I don't think I was in the shaft more than once."

JOHN TUHEY, called and sworn for def't, testified as follows:

"I reside at the Silver Bow creek, near this town. I am ranching and mining. I have mined in California, Nevada, and Idaho, and from this mountain range back in Bear gulch, and through the Couer D'Alene range, and all through Montana. I have placer mined a good many years. I placer mined 7 or 8 years in Butte City. I don't know where the Betsy Dahl claim is. I do know where the Montana Copper Co.'s works are. I examined that
78 ground for the purpose of ascertaining its placer character. I prospected it, and from what I got I do not think it would pay. You would have to sink and timber to get the stuff out, and any man who would undertake that would get in debt. I don't think it is placer-mining ground. In one hole 30 feet deep I got light colors, but not enough to justify me in working it. From my experience as a placer miner and from my knowledge of that ground I don't consider it placer-mining ground; if it costs $5.00 to get out two bits it is not placer ground."

Cross-examined:

"I prospected two holes up there; one was on the south side of the creek and the other fornenst it, about where the school-house is—about 600 feet from the Montana Copper Co.'s works; one hole was right in the Silver Bow creek; that would be between the smelter and Talbot's place. I never done any work on the east side of the creek. There used to be a district over there called Sullivan district. That was right where that shaft is."

Objected to by counsel for pl'ff. Objection overruled.

"That hole was sunk to make the district. I think the west
79 boundary of Sullivan district was up towards the forks of Dixie. That would be north of this ground. Sullivan district comes up to Independence district. The Sullivan district would include this ground. I think Sullivan district was organized in 1866. I was living in the district then. I was one of the miners of the district. I was not present at its organization. John Manuel, Black Jack, and others were present."

Recross:

"A great many miners of Summit Valley were present. I only know that from what was told me. I lived in the district."

Redirect:

"I know myself that this ground was in the district."

Motion to strike out all the evidence of this witness in regard to Sullivan mining district sustained.

THOMAS C. PORTER called and sworn for def't, and testified as follows:

"I reside in Butte City. I am acting as public administrator now. For the last 20 years I have been engaged in mining—placer mining—in this district. I know where Montana Copper Works
80 are. I know where the Betsy Dahl claim is. I have examined this ground colored yellow to ascertain its placer character. I never prospected at all east of the creek. I prospected here and here, but I never got anything. I think the ground carries colors, but I do not think it valuable to work."

Cross-examined:

"I have lived right here west of the creek. I lived right where the road runs past the Betsy Dahl shaft. I did my prospecting between where I lived and the creek—about midway. The deepest place I sunk there did not exceed two feet. I think I got colors. I never worked any east of the creek."

TOM MANNING called and sworn for def't, and testified as follows:

"I live at the Clipper mill. I came here in 1865, and in '69 I went away again; then I came back and went away again two or three times, and came back to stay in 1875. I have placer mined here for 3 years. I recognize the ground here from this map.
81 I prospected about 1,800 feet from the Montana Copper Co.'s works south, and did not find anything to pay. That used to be placer-mining ground in Sullivan district. I was not present the morning of the organization, but I was the next day, and being interested in the whole thing, Henchman & Sullivan—Sullivan was recorder—showed me the book. I don't know what became of the book; it was in Henchman's possession. I do not know what became of Henchman. In '69 he was in Michigan; afterwards I heard of him in Pennsylvania. I do not know what became of the book. Henchman had it, and he has been out of the county since the fall of '66 or the spring of '67."

Now, I will ask you what you known of the organization of the Sullivan district.

Objected to and objection sustained.

Do you know the boundary of Sullivan district?

Objected to and objection sustained, to which def't takes exception.

Do you know whether the ground in controversy here was in or out of the district?

Same objection; same ruling; def't excepts.

82 Cross-examined:

"I prospected right in the bed of the creek. We sunk some holes on the sides, but never got bed-rock; in the creek we got some colors of gold."

Redirect:

"We never got enough colors that would pay."

C. E. HUMPHRIES called and sworn for def't, and testified as follows:

"I reside in Butte City; have lived here since '66. My business has been mining, blacksmithing, wagon-making, &c. I have been interested in mines for the last 16 or 17 years. I have prospected for placer mines up here. I have examined this ground colored yellow to ascertain its character as placer-mining ground. I prospected it by panning. That was on the east side, and I found nothing that would justify a man in taking up any placer ground. I could not find anything that would pay. I did that work in 1867."

Cross-examined:

"I worked there in '67 long enough to find out there was nothing there to pay. We sunk from 2½ to 12 feet in different places.
83 We sunk on the east side of the creek, about 150 to 500 feet from the creek. We did not get to bed-rock anywhere. I am acquainted with the general way in which placer mining is conducted. It is not always customary to first strip the ground and then sink down to bed-rock. It depends on how much water you have got, and the surroundings. Sometimes you find the gold from the grass roots down—as a general thing, if you find it on top. From the bottom of my heart I think placer mining can be prospected without going to bed-rock. As I said before, it depends upon the formation. There, east of the creek, where I prospected in fifty pans, I might get a color. I nowhere sunk down to bed-rock. That ground has mineral in it, but not in paying quantity."

PETER BROWN called and sworn for def't, and testified as follows:

"I reside in Butte. I came to Silver Bow in 1864. I have had a good deal of experience in placer mining; about 19 years;
84 placer and quartz mining. I know the ground in dispute well. I prospected several places here and found no gold in paying quantities, although I got colors. In my opinion, from my experience as a placer miner and my knowledge of the ground, I do not consider it placer-mining ground. I never found a paying prospect."

Cross-examined:

"I prospected here about 1,500 feet east from the creek. I have found gold there."

OLIVER P. HUMPHREYS called & sworn for def't, and testified as follows:

"I reside in Butte, and my business is mining, generally. I have had very near 30 years' experience in mining; sometimes placer and sometimes quartz. I have been on the ground known as the

Betsy Dahl. I think I know that ground pretty well. From my experience as a miner and my knowledge of that ground I would say that there is no placer mine about it. I don't think there is any there."

Cross-examined:

"I have been directly and indirectly interested in that ground for a good many years. I never directly prospected on that
85 ground myself. I cannot say of my own knowledge whether it is placer-mining ground or not."

Redirect:

"To the best of my knowledge it is not."

Recross:

"I call placer ground such ground as you can ground sluice or work with hydraulic or drift, by which you get gold out in paying quantities. I would call that placer-mining ground. Ground that would produce colors, but not in paying quantities, I would not call placer-mining ground. I would not call it a mine. I don't know of my own knowledge whether colors can be found there. It is a pretty big country, and you might find a color in it, and you might not."

Defendant rests.

Plaintiff offers in evidence as rebutting testimony the file of application No. 855 by James A. Murray for patent for certain placer-mining ground.

JAMES A. MURRAY called and sworn in rebuttal for pl'ff, and testified as follows:

"I know where the Betsy Dahl claim is. I know that portion west of it. That is the west side of the Silver Bow creek. I claim that ground as placer-mining ground. I have applied for patent for it."

86 Plaintiff offers in evidence the records of the land office at Helena connected with application for patent for the premises.

Objected to by def't on the ground that the application is not for the ground in dispute and does not in any way concern this ground, and that it is irrelevant and immaterial.

Objection overruled and exception taken.

Admitted in evidence and marked "Exhibit H" and read to the jury.

A. B. RINGLING called, sworn for pl'ff in rebuttal, and testified as follows:

Please describe the 20-acre tract in controversy. What is it?

"It is the west half of the southeast quarter of the southwest quarter of section 8, township 3 south of range 7 west."

What part of the tract is that?

"It would be the east ½ of the southwest ¼ of the southwest quarter."

Wait a minute.

"This is the S. W. ¼ of the S. W. ¼ running up this line across there to the section line."

That would comprise two 20's?

87 "Yes; two 20's."

Can you show on the map where the N. W. ¼ of the S. W. ¼ of the section would be?

"Beginning at a point there and running up to the quarter corner and down to here."

Now can you show the S. W. ¼ of the S. W. ¼?

"That begins at the section corner and down to here."

Does that embrace this portion of the Betsy Dahl claim here?

"Yes, sir."

That is all.

No cross-examination. Testimony closed.

Thereupon the court instructs the jury, and defendant files his bill of exceptions No. 7 as follows, to wit:

2nd Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Def't's Bill of Exceptions No. 7.

The above cause coming on for trial April 8, 1884, and
88 being tried on said day and on April 9, 1884, days of the March term, 1884, of the above court, and the testimony for plaintiff and defendant being closed and argument of counsel being made, and the court having instructed the jury, now, before said cause is submitted to the jury, the def't, by his counsel, duly excepts to the giving and refusing of instructions and special findings by the court in the following particulars, to wit, in refusing to give instructions offered by the def't, and numbered 2, 5, 7, 8, 10, 11, 12, for the reason that the same correctly state propositions of law applicable to the case at bar and which are necessary in order that the jury may give a proper verdict under the law and evidence.

To the refusing to submit to the jury special findings numbered 2, 3, 4, 5, 7, offered by def't, for the reason that it is material and necessary that said facts be found by the jury in order that a proper judgment may be entered in the case.

To the giving of instructions numbered second, third, fourth,
fifth, and seventh and eight, offered by the pl'ff, for the reason
89 that the same are immaterial and irrelevant, and do not correctly state the law, and are misleading to the jury, and prevent them from giving a proper verdict in the case.

Also the giving of special findings offered by pl'ff and given by

the court, numbered first, second, third, because the same are unnecessary, immaterial, and irrelevant and call for answer to questions at law and not of fact.

Wherefore def't asks that his bill of exceptions be signed, which is done this 9th day of April, 1884, and before the cause is submitted to the jury.

WM. J. GALBRAITH,
Judge 2d Jud. Dist. Court.

Endorsement: Filed April 9, 1884. R. L. Davis, clerk, by Charles S. Warren, deputy clerk.

And afterwards the jury came in and gave the following verdict:

Second District Court, Montana Territory, Silver Bow County.

90 MONTANA COPPER COMPANY
vs.
HENRY C. DAHL.

"We, the jury, find a verdict for the plaintiff in the above cause.
"LOUIS DEMERS, *Foreman.*"

Endorsement: Filed April 10, 1884. R. L. Davis, clerk, by Chas. S. Warren, deputy clerk.

Second District Court of Montana Territory, Silver Bow County.

MONTANA COPPER COMPANY, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

Decree.

This cause coming regularly on to be heard on this 8th day of April, 1884 (being one of the days of the regular March term of said court), on the amended complaint of plaintiff and the amended answer of defendant, a jury of twelve men were regularly empanneled and sworn to try said cause. After hearing the evidence, the
91 argument of counsel, necessary instructions of the court, and the court submitting to the jury certain questions of fact to be returned by the jury with their answers thereto, the same being special findings of fact to be made by the jury in this case, the jury retired to considered of their verdict, and subsequently, on the — day of April, 1884, returned into court, and, being called, all answered to their names and rendered their written verdict in said cause, which verdict was in favor of the plaintiff; and on the several questions of fact the jury likewise returned answers to said questions in favor of said plaintiff; and the court having duly considered the verdict of the jury and their findings on the questions of fact submitted to them and being fully satisfied therewith, now, therefore,

by virtue of the law and by reason of the premises aforesaid, on motion of S. De Wolfe, attorney of plaintiff, it is ordered and adjudged and decreed that plaintiff have judgment, as prayed for in the amended complaint herein, against the defendant; that the adverse claim of the defendant and all persons claiming or to
92 claim the premises hereinafter described or any part thereof through or under said defendant are adjudged and decreed to be invalid and groundless; that plaintiff be, and it is hereby, adjudged and decreed to be the true and lawful owner of said premises, in possession and entitled to the possession thereof and every part, and that plaintiff's title thereto is hereby adjudged to be quieted against all claims, demands, and pretensions of defendant to said premises or any part. Said premises are bounded and described as follows, to wit: The west half of the southeast quarter of the southwest quarter of section eight (8), in township three (3) north, range seven (7) west, of the principal meridian of Montana Territory, containing twenty acres of placer-mining ground.

It is further adjudged and decreed that plaintiff do have and recover his costs expended in this action of and from the defendant, Henry C. Dahl, taxed at $121.45.

WM. J. GALBRAITH, *Judge.*

10th April, 1884.

93 Endorsement: "Filed April 10, 1884. R. L. Davis, clerk, by Charles S. Warren, deputy clerk."

Second District Court, Silver Bow County, Montana Territory.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Instructions Asked by Plaintiff.

"If the jury believe from the evidence that the premises in controversy was located by the grantors and predecessors in interest of plaintiff, as a placer mining claim, in accordance with law, and *to* held and own- said premises up to the time the same was sold and conveyed to plaintiff, and plaintiff thereafter continued to hold and be the owner thereof up to the time of making application for a patent therefor as a placer mining claim, and at the time of making such application there was no known lode or vein within the boundary of the premises claimed by defendant, your verdict must be for plaintiff. Given.

Second.

94 The burden of proving the existence of a vein or lode within the boundaries of a placer-mining claim before located is on the party alleging the fact. — in this case the defendant Dahl has shown to the satisfaction of the jury the existence of the Betsy Dahl lode within the boundaries owned by plaintiff, and also

that said Betsy Dahl lode was known to exist within said placer claim at the time plaintiff applied for a patent therefor, your verdict must be for the plaintiff. Given.

Third.

The fact that a location of a lode claim has been made upon and over a placer claim owned by another is not sufficient of itself to prove the existence of the lode within the placer claim. The lode itself must exist and be known to exist — the time the owner or claimant of the placer claim applied for a patent therefor. If the jury, therefore, believe from the evidence that no vein or lode was known to exist within the boundaries of the placer claim claimed by plaintiff at the time he applied for a patent therefor, their
95 verdict must be for the plaintiff, provided they find plaintiff is the owner of the premises claimed by it as a placer claim. Given.

Fourth.

If the jury believe from the evidence that plaintiff, at the time alleged in this complaint, was the owner of the placer-mining claim described in its amended complaint, and applied for a patent therefor, as alleged, and the defendant failed to file any adverse claim with the register and receiver of the land office within the district in which the premises are situated at the expiration of the sixty days of publication of the notice of application for patent, in that case (if you shall so find) the court instructs you that the defendant, not having availed himself of his right to file an adverse claim to plaintiff's said application for patent within the sixty days allowed by law, *he* is not now in a position to contest plaintiff's possession of and right to a patent for said placer claim, and your verdict, if you so find, must be for plaintiff, unless you should also find that plaintiff has failed to comply with the provisions of the
96 mining laws of the United States. Given.

Fifth.

The possession of a mining claim may be actual or constructive, and either is sufficient in law. Constructive possession grows out of the location of a claim and the holding and working the same in conformity with law. The laws of the United States do not require one hundred dollars in labor and improvement to be made upon placer claims yearly, as in case of lode claims, and, in the absence of any rules and regulations of miners, it is sufficient to locate a placer claim in conformity with law to entitle the owner to the possession. If you believe from the evidence that the placer-mining claim owned by plaintiff was located prior to the location of the Betsy Dahl lode claimed by defendant, and that no lode or vein was known to exist within the boundaries of the placer claim at the time plaintiff applied for patent for the placer claim, your verdict should be for the plaintiff, Montana Copper Company. Given.

Sixth.

97 It is not incumbent on the plaintiff in this case to prove that the premises claimed by it as a placer mine contained gold or other mineral deposits; but if the land and premises claimed by it were returned to the land office at Helena (within which land district the premises are situated) as mineral lands, and was held as such by the officers of the land department of the Government, and were subject only to entry as mineral lands, this action of the officers of the land department fixes the character of the land and is conclusive and binding on the court and the parties to this action. Refused.

Seventh.

If the jury believe from the evidence that the defendant in locating the Betsy Dahl lode entered on the premises claimed by James A. Murray as a placer claim, and that said Murray, before the location of said Betsy Dahl lode, applied for a United States patent for the placer claim, and no vein or lode such as the Betsy Dahl was known to exist within the boundaries of the placer claim at the time of applying for such patent, the court in that case in-
98 structs you that the location of the Betsy Dahl within said placer claim was too late and defendant acquired no rights under said location, and your verdict must be for plaintiff. Given.

Endorsement: Filed April 10, 1884. R. L. Davis, clerk, by Charles S. Warren, dep. clerk.

2nd Judicial District Court, Silver Bow County, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Instructions Requested by the Defendant.

First.

If the jury find from the evidence that at the commencement of this action the plaintiffs had not the possession of the ground in controversy they will find for the defendant. Given.

Second.

Possession of mining ground is either actual or constructive.
99 Constructive possession arises when there are laws, rules, and regulations in force for the location and holding of mining ground. When it is proved that such laws, rules, and regulations are in force governing the location and holding of ground, and that a claimant of such ground has complied with the same, then he is said to have constructive possession of the ground, which for the purposes of an action to quiet title is sufficient. Refused.

Third.

If the jury find from the evidence that the ground claimed by the plaintiff in this action is not placer-mining ground they will find a verdict fo defendant. Given.

Fourth.

Before the jury can give a verdict for the plaintiff they must believe from the evidence that the ground in controversy is placer-mining ground. Given.

Fifth.

Unless the jury find upon the evidence that the plaintiffs, their grantors or predecessors in interest, made a discovery of valu-
100 able deposits in the ground claimed by their placer-mining location, upon which they defend in this action, they must find for the defendant. Refused.

Sixth.

If the jury find from the evidence that on the 19th day of November, 1880, when the plaintiffs allege that they made application to the United States for patent, a vein or lode of quartz was known to exist on the ground applied for, and that said vein or lode was afterwards located and claimed by defendant as the Betsy Dahl quartz claim, and that plaintiffs did not include in said application for patent the said vein or lode, then plaintiffs waived all claims to said vein or lode. Given.

Seventh.

In order to find for the plaintiffs it is not sufficient for the jury to believe from the evidence that the ground in controversy was mineral land according to the returns of the United States land office, and they must find that said ground was valuable for placer-mining purposes. Refused.

101 Eighth.

In order to find for the plaintiffs the jury must find from the evidence that before commencing this action the plaintiffs, as a foreign corporation, had, before the commencement of this action, filed in the office of the secretary of Montana and in the office of the county recorder of the county wherein they were doing business at the commencement of this action a duly authenticated copy of their charter or certificate of incorporation, and also a statement, verified by the oath of the president and secretary of said plaintiffs and attested by a majority of their board of directors, showing—

First. The name of such incorporation, the plaintiffs herein, and the location of its principal office or place of business without this Territory, and if it have a place of business or principal office within this Territory, the location thereof.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid in money.

Fourth. The amount of its capital stock paid in any other way, and in what.

Fifth. The amount of the assets of the incorporation and
102 of what the assets consist, with the actual cash value thereof.

Sixth. The liabilities of such incorporation, and if any of its indebtedness is secured, how and upon what property.

And also, in the same offices, a certificate under the seal of the corporation, the plaintiffs herein, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that said corporation, plaintiff herein, has consented to be sued in the courts of this Territory upon all causes of action arising against it in this Territory, and that service of process may be made upon some person a citizen of this Territory, with his name and place of residence designated in said certificate, and that process when so served upon such agent shall be taken, deemed, and held to be as valid to all intents and purposes as if served upon the company in the State or Territory under the laws of which it is organized, and also the written consent of the person designated as aforesaid, in the same offices; and if it do not appear from the evidence that the plaintiffs had filed the papers above described and each of them in the offices above mentioned, the jury must
103 find for the defendant. Refused.

Ninth.

The possession of the plaintiff, if it had any, must be a possession for placer mining purposes, and if it is not proved by the evidence that it was for such purposes you must find a verdict for the defendant. Given.

Tenth.

In determining what is placer ground the jury are not to consider ground such that will merely furnish a color, but it must be more valuable for placer mining than for other purposes. Refused.

Eleventh.

If the jury find from the evidence that the ground in dispute is in a mining district, then they must also find that the plaintiff has complied with the requirements of the district; otherwise they must find for the defendant. Refused as misleading.

Twelfth.

Unless the jury find from the evidence that the ground claimed by the witness Murray is placer-mining ground, and when
104 def't made his location of the Betsy Dahl said Murray was in possession of said ground, they cannot find that said ground was occupied, but, on the contrary, they must find that the ground claimed by said Dahl was; when claimed by him, public, unoccupied

land of the United States and subject to location by said Murray. Refused.

Endorsement: Filed April 10, 1884. R. L. Davis, clerk, by Charles S. Warren, deputy clerk.

Second Judicial District Court, Montana Territory, Silver Bow County.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Instructions.

The court instructs the jury to make returns with their verdict special findings of fact as to the several annexed interrogatories, and sign the same, by their foreman, with their answer thereto, "yes" or "no."

First.

105 Did George F. Marsh locate the premises in controversy on or about the 26th of May, 1879, as a placer-mining claim? Given.

Answer. Yes.

LOUIS DEMERS, *Foreman.*

Second.

If George F. Marsh did locate the premises mentioned in the preceding interrogatory on or about the period mentioned, have he and his grantee since continued in either the actual or constructive possession of such premises? Given.

Answer. Yes.

LOUIS DEMERS, *Foreman.*

Third.

Was the plaintiff in the actual or constructive possession of said premises at the time of bringing this action? Given.

Answer. Yes.

LOUIS DEMERS, *Foreman.*

Fourth.

Did the plaintiff, Montana Copper Company, on or about the 19th of November, 1880, make application at the land office for a patent for the premises in controversy in this action? Given.

Answer. Yes.

106 Fifth.

At the time of making application for patent (if the jury answer "yes" to the last interrogatory) was a lode or vein known to exist

within the boundaries of the premises claimed by the defendant in this action? Not given.

Sixth.

If the jury answer "yes" to the fourth interrogatory, did the defendant herein file an adverse claim to the application made by plaintiff within the sixty days of publication allowed by law for filing such adverse claim? Given.

Answer. "No."

LOUIS DEMERS, *Foreman.*

Seventh.

At the time of making application for patent (if the jury find that plaintiff did make such application) was a lode or vein known to exist within the boundaries of the premises in controversy in this action?

Answer. "No."

LOUIS DEMERS, *Foreman.*

Eighth.

107 The court instructs you that it is not incumbent on the plaintiff in this case to prove that the premises claimed by it as a placer-mining claim contained gold or other mineral deposits.

Endorsement: Filed April 10, 1884. R. L. Davis clerk, by Charles S. Warren, deputy clerk.

Second Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Special Findings Requested by Defendant.

The jury will find upon the following matters and answer each of the following questions according to the evidence and sign the following questions by their foreman:

First.

Was it proved by the evidence that the ground claimed by the plaintiff in this action was placer-mining ground at the time of the alleged location by plaintiffs grantors? Given.

Answer. Yes.

LOUIS DEMERS, *Foreman.*

108 Second.

Is the ground claimed by plaintiff in this action now or has it ever been of any value for placer-mining purposes? Refused.

Third.

Is the ground claimed by plaintiff more valuable for placer mining than for agricultural purposes? Refused.

Fourth.

Did the plaintiffs or their grantors or predecessors in interest or any of them ever make a discovery of any valuable deposit upon the ground in controversy? Refused.

Fifth.

Have the plaintiffs or their grantors or predecessors in interest or any of them complied with any local laws, regulations, or customs of miners in locating or holding the ground claimed by plaintiff? Refused as misleading.

Sixth.

At the commencement of this action did the plaintiff- have possession of the ground claimed by them?

Answer. Yes.

LOUIS DEMERS, *Foreman.*

109 Seventh.

At the commencement of this action did the defendant have possession of the Betsy Dahl quartz lode claim? Refused.

Eighth.

When defendant made his location of the Betsy Dahl quartz claim was the ground claimed by James A. Murray placer ground? Given.

Answer. Yes.

LOUIS DEMERS, *Foreman.*

Ninth.

When defendant made his location of the Betsy Dahl quartz claim was James A. Murray in possession of the ground claimed by him?

Answer. Yes.

LOUIS DEMERS, *Foreman.*

Endorsement: Filed April 10, 1884. R. L. Davis, clerk, by Charles S. Warren, deputy clerk.

Second Judicial District Court, County of Silver Bow, Montana.

MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

110 *Specifications of Error.*

On the motion for a new trial in the above cause the defendant

will rely upon the following grounds and specifications of particulars in which the evidence is insufficient to sustain the verdict and the verdict is contrary to the law and the evidence, and the following specifications of errors in law occurring at the trial and excepted to by the defendant:

First.

Insufficiency of the evidence to justify the verdict, and that the verdict was against the law, in this, to wit:

A. That the court instructed the jury that if they find from the evidence that the ground claimed by the plaintiff is not placer-mining ground they will find a verdict for the defendant, and the evidence did not prove or tend to prove that said ground was placer-mining ground.

B. That there was evidence to prove or tending to prove that the ground claimed by the plaintiff as placer-mining ground was ever located or claimed or possessed as such by the plaintiff or its
111 grantors or predecessors in interest, or that either of them ever discovered any valuable deposits thereon.

C. That there was no evidence to prove or tending to prove that the plaintiff had actual or constructive possession of the ground by it claimed, at the commencement of this action or at any other time, and there was no evidence to support the special finding of the jury in this respect, and there was no evidence to prove or tending to prove that the plaintiff or its grantors ever complied with the laws of the United States, the Territory of Montana, or any local rules or regulations of miners in attempting to locate or hold said ground.

D. That the court instructed the jury that the possession of the plaintiff, if it had any, must be a possession for placer-mining purposes, and if it is not proved by the evidence that it was for such purposes the jury must find a verdict for the defendant; and the evidence did not prove or tend to prove that the plaintiff ever had such possession.

Second.

Errors of law occurring at the trial and duly excepted to by the defendant as follows, to wit:

112 A. Error in admitting into evidence the alleged location notice referred to in defendant's bill of exceptions No. 1, which said error is fully set forth in said bill of exceptions, which, the same, and the evidence of the witness Marsh are hereby referred to and made a part of these specifications.

B. Error in admitting into evidence the affidavit of F. Adkinson, referred to in defendant's bill of exceptions No. 2, which said error is fully set forth in said bill of exceptions, which, the same, and said affidavit are hereby referred to and made a part of these specifications.

C. Error in admitting into evidence the testimony of Stephen De Wolfe, Esq., referred to in defendant's bill of exceptions No. 3, which said error is fully set forth in said "bill," and the same and said

testimony are hereby referred to and made a part of these specifications.

D. Error in admitting into evidence the testimony of H. T. Brown and the notice of application for patent mentioned in defendant's bill of exceptions No. 4, which said error is fully set forth in
113 said bill, and the same and the said testimony of said Brown and said notice of application for patent are hereby referred to and made a part of these specifications.

E. Error in overruling defendant's motion for a nonsuit, for the several reasons set forth in said motion, which said error is fully set forth in defendant's bill of exceptions No. 5; which said motion and bill of exceptions and all of plaintiff's evidence are hereby referred to and made a part of these specifications.

F. Error in giving and refusing instructions and special findings, which said errors are fully set forth in defendant's bill of exceptions No. 7, which, with said instructions and special findings, are hereby referred to and made a part of these specifications.

Due service upon me this 1st day of August, 1884, of the foregoing statement on motion for a new trial is admitted and copy and engrossment waived, it being stipulated that service on said day shall be with the same effect as if made within the statutory time from the trial of the said cause.

S. DE WOLFE,
Attorney for Plaintiff.

114 It is hereby stipulated by and between plaintiff and defendant in the above cause that the foregoing shall be the statement on motion for a new trial.

Dated the 3rd day of September, 1884.

S. DE WOLFE, *Att'y for Pl'ff.*
RANDOLPH & DE WITT,
Att'ys for Def't.

Second Judicial District Court, County of Silver Bow, Montana.

THE MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

To Stephen De Wolfe, Esqr., pl'ff's attorney, and the clerk of the above court:

Please take notice that the defendant in the above-entitled cause intends to move the court to vacate and set aside the verdict of the jury in the above cause and the judgment therein entered in favor of pl'ff and against defendant, and to grant a new trial therein on the following grounds, to wit:

First.

115 Insufficiency of the evidence to justify the verdict, and that the verdict was against the law, in this, to wit:

A. That the court instructed the jury that if they find from the evidence that the ground claimed by the plaintiff is not placer-mining ground they will find a verdict for def't, and the evidence did not prove or tend to prove that said ground was placer-mining ground.

B. That there was no evidence to prove or tending to prove that the ground claimed by plaintiff as placer-mining ground was ever located or claimed or possessed as such by the pl'ff or its grantors or predecessors in interest, or that either of them ever discovered any valuable deposits thereon.

C. That there was no evidence to prove or tending to prove that the pl'ff had actual or constructive possession of the ground by him claimed, at the commencement of this action or at any other time, and there was no evidence to support the special findings of the jury in this respect, and there was no evidence to prove or tending
116 to prove that the pl'ff or its grantors ever complied with the laws of the United States, the Territory of Montana, or any local rules or regulations of miners in attempting to locate or hold said ground.

Second.

That the court instructed the jury that the possession of the pl'ff, if it had any, must be a possession for placer-mining purposes, and if it is not proved by the evidence that it was for such purposes the jury must find a verdict for def't, and the evidence did not prove or tend to prove that pl'ff ever had any such possession.

Errors of law occurring at the trial and duly excepted to by the defendant, to wit:

A. Error in admitting into evidence the alleged location notice referred to in defendant's bill of exceptions No. 1, which said error is fully set forth in said bill of exceptions, which, the same, and the evidence of the witness Marsh are hereby referred to and made a part of this motion.

117 B. Error in admitting into evidence the affidavit of F. Adkinson, referred to in defendant's bill of exceptions No. 2, which said error is fully set forth in said bill of exceptions, which, the same, and said affidavit are hereby referred to and made a part of this motion.

D. Error in admitting into evidence the testimony of H. T. Brown and the notice of application for patent mentioned in defendant's bill of exceptions No. 4, which said error is fully set forth in said bill, and the same and the testimony of said H. T. Brown and said notice of application are hereby referred to and made a part of this motion.

E. Error in overruling defendant's motion for a nonsuit for the several reasons set forth in said motion, which said error is fully set forth in defendant's bill of exceptions No. 5, which said motion and bill of exceptions and all the plaintiff's evidence are hereby referred to and made a part of this motion.

F. Error in giving and refusing instructions and special findings,

which said errors are fully set forth in defendant's bill of ex-
118 ceptions No. 7, which, with said instructions and special findings given and refused, are hereby referred to and made a part of this motion.

This motion for a new trial will be made upon defendant's bills of exception numbered 1, 2, 3, 4, 5, and 7, and upon a statement of the case to be settled.

Respectfully, RANDOLPH & DE WITT,
Def't's Att'ys.

Due service of the foregoing motion the 1st day of August, 1884, is hereby admitted and copy waived, it being stipulated that service on said day shall be with the same effect as if made within the statutory time.

S. DE WOLFE,
Pl'ff's Attorney.

Endorsement: Filed Sept. 3, 1884. R. L. Davis clerk, by Charles S. Warren, deputy clerk.

119 In the District Court of the Second Judicial District of the Territory of Montana in and for the County of Silver Bow.

THE MONTANA COPPER COMPANY
vs.
HENRY C. DAHL.

March Term, 1885. Monday, Apr. 6, 9 a. m.

On motion for new trial, motion overruled.

Second Judicial District Court in and for the County of Silver Bow.

THE MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

To Stephen De Wolfe, Esq., att'y for plaintiff.

SIR: Please take notice that the defendant in the above-entitled action hereby appeals to the supreme court of Montana Territory from the judgment made and entered in said action in the said district court on the 10th day of April, 1884, in favor of the plaintiff and against the defendant, and from the whole thereof, and
120 also from an order made and entered in said action on the 6th day of April, 1885, denying motion for a new trial therein.

Dated April 15, 1885.

WILLIAM H. DE WITT.
Att'y for Def't.

Endorsement: "Due and timely service of the within notice of appeal is hereby admitted. Dated April 18, 1885. S. De Wolfe, pl'ff's

att'y. Filed April 19th, 1885. R. L. Davis, clerk, by Charles S. Warren, deputy clerk."

Second Judicial District Court in and for the County of Silver Bow.

THE MONTANA COPPER COMPANY, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Whereas the defendant in the above-entitled action has appealed to the supreme court of Montana Territory from a judgment made and entered in said action in the said district court, in favor of the plaintiff and against the said defendant, on the 10th day of April,
121 1884, and awarding 121.45 dollars costs to the said plaintiff and against said defendant, and also from an order denying a new trial therein, which said order was made and entered on the 6th day of April, 1885, now, therefore, in consideration of the premises and of such appeal, we, the undersigned, Daniel Gamer and Adolph Speckart, residents of the county of Silver Bow, Montana Territory, do hereby jointly and severally undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded him on the said appeal or on a dismissal thereof, not exceeding the sum of three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

Dated April 18, 1885.

DANIEL GAMER. [L. S.]
ADOLPH SPECKART. [L. S.]

In presence of—
WM. H. DE WITT.

TERRITORY OF MONTANA, } *ss:*
County of Silver Bow, }

Daniel Gamer and Adolph Speckart, the persons described in and who executed the above undertaking, being duly sworn, each
122 for himself says that he is a resident of said county and Territory, and is worth the sum of three hundred dollars, the sum specified in said undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

DANIEL GAMER.
ADOLPH SPECKART.

Subscribed and sworn to before me this 18th day of April, 1885.

W. O. SPEER,
Notary Public, Montana Ter.

Endorsement: Filed April 18, 1885. R. L. Davis, clerk, by Chas. S. Warren, deputy clerk.

123 Second Judicial District Court, County of Silver Bow, Montana Territory.

OFFICE OF THE CLERK.

MONTANA COPPER COMPANY, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

TERRITORY OF MONTANA,
County of Silver Bow, } ss:

I, Reuben L. Davis, clerk of the above-named court, hereby certify that the foregoing transcript is a full, true, and correct copy of the original papers on file in my office as ordered by the appellant.

Witness my hand and the seal of the said court this first day of August, A. D. 1885.

[SEAL.]

R. L. DAVIS, *Clerk*,
By CHARLES S. WARREN,
Deputy Clerk.

Filed Aug. 5, 1885.

I. R. ALDEN, *Clerk.*

124 In Supreme Court of Montana Territory. August Term, A. D. 1885.

MONTANA COPPER COMPANY, Respondent,
vs.
HENRY C. DAHL, Appellant.

Be it remembered that in the present term of August, A. D. 1885, the above-entitled cause was brought into said supreme court by virtue of an appeal taken agreeably to the statute of Montana Territory and the rules of said court in such case provided, and the transcript of the record of the court below filed in said cause in said supreme court; and said cause, coming on to be heard before the court on said transcript of record, was argued by counsel. Thereupon the court took the same under advisement.

And afterwards, to wit, at the January term, A. D. 1886, said cause coming for the decision and judgment of said court on appeal, the court delivered its opinion and decision in writing, of which said opinion and decision the following is a true copy, to wit:

125 In the Supreme Court of Montana Territory. January Term, 1886.

THE MONTANA COPPER COMPANY, Respondent,
vs.
HENRY C. DAHL, Appellant.

Appeal from second dist. court, Silver Bow county.

WADE, *C. J.*, delivered the opinion:

This is an action to quiet the title to certain placer-mining ground

which the respondent (plaintiff) claims by virtue of a location made on the 26th day of March, 1879. The appellant (defendant) claims a portion of the same ground by virtue of his location of the Betsy Dahl lode claim, made on the 9th day of March, 1881. The respondent made application for a patent and published notice thereof, according to law, from and after the 19th day of November, 1880. No adverse claim was filed during the period of publication, and it was not until months after such period that appellant located the Betsy Dahl lode claim. The appellant was, therefore, barred from
126 questioning respondent's location. The case is within the decision in Raunheim *vs.* Dahl, just decided. (6 Mont., —.) The appellant having filed no adverse claim to respondent's application for a patent, he can claim nothing by the Betsy Dahl location unless the vein or lode was known to exist at the time respondent made his application. Upon this subject the jury made a special finding, and declared that at the time respondent made his application for a patent no lode or vein was known to exist within the boundaries of his placer claim. The discovery of the Betsy Dahl location was outside of said boundaries, and the finding of the jury and the evidence conclusively show that there was no vein or lode known to exist within the boundaries of the placer claim at the time respondent made its application for a patent.

The appellant has no case. The judgment is affirmed with costs.

D. S. WADE,
Chief Justice.
WM. J. GALBRAITH,
Asso. Justice.

Filed Jan'y 9, 1886.

I. R. ALDEN, *Clerk.*

127 Thereupon judgment on appeal was entered in said cause as follows, to wit:

In the Supreme Court of Montana Territory. January Term, 1886.

MONTANA COPPER COMPANY, Respondent,
vs.
HENRY C. DAHL, Appellant,

Whereas, in the present term of January, A. D. 1886, of this supreme court, the above-entitled cause coming on for the decision and determination of the court on appeal, the court rendered its decision in writing and orders that the judgment and decree of the court below in said cause, made and entered on the 10th day of April, 1884, be affirmed with costs; and it is hereby further ordered and adjudged by the court here that said respondent, Montana Copper Company, recover against said appellant, Henry C. Dahl, —— dollars for its costs herein expended and have execution therefor.

9th January, 1886.

128 And on the 20th day of January, 1886, said defendant and appellant sued out a writ of error from the Supreme Court of the United States directed to remove said cause from the supreme court of Montana Territory to the Supreme Court of the United States, of which, in words and figures, the following is a copy, to wit:

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
vs.
MONTANA COPPER COMPANY.

The President of the United States to the honorable the justices of the supreme court of the Territory of Montana, Greeting:

Because in the record and the proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, in the cause between Henry C. Dahl, defendant therein and plaintiff in error, and Montana Copper Company, plaintiff therein, a manifest error hath happened, to the great damage
129 of the said Henry C. Dahl, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness Hon. Morrison R. Waite, Chief Justice of said Supreme Court, this 20th day of January, 1886.

ISAAC R. ALDEN,
Clerk of the Supreme Court of the Territory of Montana.

Allowed this 20th day of January, 1886.

D. S. WADE,
Chief Justice.

130 *Undertaking on Writ of Error.*

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
vs.
MONTANA COPPER COMPANY, Defendant in Error.

Know all men by these presents that we, C. B. Hauser and Dan. Gamer, of the county of Silver Bow, Montana Territory, are held and firmly bound unto the Montana Copper Company, above named,

in the sum of one thousand dollars, lawful money of the United States, to be paid to the said Montana Copper Company and to its successors; to which payment, well and truly to be made, we bind ourselves and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3d day of March, 1886.

Whereas the above-named Henry C. Dahl has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the Territory of Montana:

Now, therefore, the consideration of this obligation is such
131 that if the above-named Henry C. Dahl shall prosecute the writ of error to effect and answer all damages and costs if he fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

C. B. HAUSER. [SEAL.]
DAN. GAMER. [SEAL.]

Witness:
WM. H. DE WITT.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

C. B. Hauser and Dan. Gamer, being duly sworn, each for himself says that he is worth the sum of one thousand dollars over and above all his debts and liabilities and property exempt by law from execution, levy, and sale under the same.

C. B. HAUSER.
DAN. GAMER.

Subscribed and sworn to before me this 3rd day of March, 1886.

WM. H. DE WITT,
[SEAL.] *Notary Public, Silver Bow County, Montana.*

132 *Affidavit of Value.*

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
vs.
MONTANA COPPER COMPANY, Defendant in Error.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Henry C. Dahl, being duly sworn, says that he is the plaintiff in error in the above-named case; that he is well acquainted with the ground and premises in controversy in the above-entitled action; that said premises are very valuable as quartz mining ground, and that the amount in controversy in said action far exceeds the sum of five thousand dollars over and above and exclusive of the costs and charges of said suit.

HENRY C. DAHL.

Subscribed and sworn to before me this 18th day of January, 1886.

WM. H. DE WITT,
Notary Public in & for the County of Silver Bow,
Montana Territory.

[SEAL.]

133 *Citation.*

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
vs.
MONTANA COPPER COMPANY.

UNITED STATES OF AMERICA, *ss:*

To Montana Copper Company, the above-named defendant in error, and Stephen De Wolfe, Esq., its attorney:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Montana, wherein Henry C. Dahl is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice be done to the party in that behalf.

Witness Hon. Decius S. Wade, chief justice of the supreme court of the Territory of Montana, this 20th day of Jan'y, 1886.

D. S. WADE,
Chief Justice.

To the above-named Montana Copper Company and S. De Wolfe, Esq., its counsel:

134 Please take notice that the above-named plaintiff in error has lodged with the clerk of the supreme court of Montana for you a copy of the writ of error in the above case.

Respectfully, DE WITT & BACH,
Attorneys for the Plaintiff in Error.

Due service upon me of the above citation and notice the 25th day of January, 1886, is admitted and copy waived.

S. DE WOLFE,
Attorney for Montana Copper Company, Above Named.

Filed Jan'y 27, 1886.

I. R. ALDEN, *Clerk.*